



Bruce A. Hidley
Albany County Clerk
County Courthouse, Room 128
16 Eagle Street
Albany, NY 12207-1077
Phone: (518) 487-5100 Fax: (518) 487-5099
Email: www.albanycounty.com/clerk

Receipt

Receipt Date: 05/08/2018 09:09:02 AM
RECEIPT # 20180226446

Recording Clerk: KL
Cash Drawer: COURT
Rec'd Frm: EMERY CELLI BRINCKERHOFF &
ABADY LLP

COPIES OF ALL DOCUMENTS IN FILE 4127-11

Misc Fees	\$92.00
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Receipt Summary

TOTAL RECEIPT: ---->	\$92.00
TOTAL RECEIVED: ---->	\$92.00

CASH BACK: ---->	\$0.00
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PAYMENTS

Check # 7097 ->	\$92.00
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EMERY CELLI BRINCKERHOFF & ABADY LLP



RW

Present: Hon _____ Justice

Supreme Court of the State of New York
County of Albany

In the matter of the Application of
Kenneth Samuels

Petitioner,

for a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Order to Show
Cause

- against -

RJI #

Index NO.

Brian Fischer, Commissioner of DOB
Eric T. Schneiderman, Attorney General

Respondents.

CO. 11
JUN 13 PM 11:29
ALBANY, N.Y.

Upon the annexed Petition of Kenneth Samuels, Verified on
the 9th day of June, 2011 and the annexed Affidavit in Support
of Order to Show Cause and all the proceeding held in regard to
his matter, it is

Ordered that _____ be and here-
by is assigned to Petitioner as the attorney whose duty it shall
be to conduct said proceeding free of charge Petitioner, and it
is further

Ordered that Service of a copy of this Order to Show Cause,
together with a copy of the papers upon which it was granted,
by regular first class mail, upon the respondents named above
and upon the Attorney General of the State of New York on or before
_____ day of _____, _____ will be deemed sufficient Service

and it is further

ordered that the Clerk of the Court shall cause such Service by regular mail to be made upon the respondents and Attorney General of the State of New York,

Let the respondents show cause before a Special term of the Supreme Court of the State of New York, County of Albany, at the Court house thereof, on the day of _____, _____, at _____ o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an Order and Judgment should not be made pursuant to Article 78 of the CPLR granting Petitioner the relief requested in the Verified Petition annexed hereto.

ENTER:

JUSTICE OF THE SUPREME COURT

Dated:





25

FILE

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

KENNETH SAMUELS, 97-A-0331,

Petitioner,

-against-

ORDER TO SHOW CAUSE

Index # 4127-11

BRIAN FISCHER, COMMISSIONER OF DOC;
ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL,

Respondent(s).

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Supreme Court, Albany County,

HON. RICHARD M. PLATKIN, ACTING JUSTICE PRESIDING

APPEARANCES: KENNETH SAMUELS
Petitioner Pro Se

This ex parte matter was referred to my attention at a
Part I Term, Supreme Court, at Albany County.

Upon reading of the Petition, sworn to the 9th day of
June, 2011;

LET respondents show cause at a Special Term of the
Supreme Court, to be held in and for the County of Albany, on
September 9, 2011, at the Albany County Courthouse, at Eagle and
Columbia Streets, Albany, New York 12207, at 9:30 o'clock in the
forenoon thereof WHY the relief requested in the Petition should
not be granted, it is

ORDERED, that service of this Order to Show Cause, the
petition, exhibits and any supporting affidavits, by ordinary First
Class Mail, upon each named respondent and upon the Attorney
General for the State of New York, at the Department of Law, State
Capitol, Albany, New York 12224, on or before July 29, 2011, shall
be deemed adequate.

It is petitioner's responsibility to:

(a) Serve his/her papers as authorized above or by
personal service. The grant of poor person relief does not
authorize the assignment or appointment of counsel, nor does it
authorize the Clerk's Office to provide photo-reproduction services

jc

4/27-11

or service of papers on behalf of a pro se litigant, as these services are not statutorily authorized under a grant of poor person relief (CPLR §1102).

(b) Submit all papers upon which he is relying, including the Order to Show Cause and the Petition, together with 3 copies of a Request for Judicial Intervention (RJI) Form and the original proof of service, to the **Albany County Supreme Court Special Term Clerk, Room 102, Albany County Courthouse, Albany, NY 12207** at least eight (8) days prior to the return date.

Answers/or opposition papers are to be served at least five (5) days before the return date.

IT IS SO ORDERED!

Dated: June 29, 2011
at Albany, New York



ACTING J.S.C.

Albany County Clerk
Document Number 10918417
Rcvd 07/11/2011 10:35:51 AM




STATE OF NEW YORK
COUNTY OF ALBANY SUPREME COURT

-----X
In the Matter of the Application of

KENNETH SAMUELS

ORDER

INDEX # 4127-11

DIN # 97-A-0331

ORI # NY001035J

*for Poor Person Status pursuant to
CPLR §1101(f).*

-----X
Nature of Action or Proceeding: Article 78

The above-named inmate under sentence for conviction of a crime and having made application pursuant to CPLR §1101(f) for Poor Person status,

It is hereby ORDERED that this application is:

- ☐ DENIED, and all applicable filing fees must be paid by the inmate within 120 days of the date of this order, or else the action/proceeding shall be deemed dismissed without further order of the court.
- ☒ GRANTED, and the inmate is directed to pay a reduced filing fee of \$ 15.00 and he/she shall be liable for no other fees in the action/proceeding before this court unless a recovery by judgment or by settlement is had in his/her favor in which event the court may direct him/her to pay out of the recovery all or part of such fees as are hereby forgiven.

It is further ORDERED:

- ☒ That the inmate IS NOT REQUIRED to make any initial payment to the court of a portion of the reduced filing fee. The full amount of the reduced filing fee shall be reported to the superintendent or other public official in charge of the facility where the inmate is confined, who shall collect such amount from the inmate in the same manner as mandatory surcharges are collected pursuant to section 60.35(5) of the Penal Law.
- ☐ That the inmate IS REQUIRED to make an initial payment of \$ _____, of the reduced filing fee. Once such initial payment is fully received by the court, the amount of the difference between such initial payment and the reduced filing fee, or \$ _____, shall be assessed as an outstanding obligation of the inmate and reported to the superintendent or other public official in charge of the facility where the inmate is confined, who shall collect such amount from the inmate in the same manner as mandatory surcharges are collected pursuant to section 60.35(5) of the Penal Law.

Dated: June 29, 2011
at Albany, New Y


Acting Justice of the Supreme Court

Copies:

COURT

Albany County Clerk
Document Number 10918417
Rcvd 07/11/2011 10:35:51 AM

FACILITY
Upst

INMATE






Supreme Court of the State of New York

County of Albany

In the Matter of the Application of
Kenneth Samuels

97-A-0331

Petitioner

Affidavit in Support
of Application Pursuant
to CPLR 1101(f) for
Reduced Filing Fee

for a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

- against -

Index #

Din #

4/27-11

Brian Fischer Commissioner of Doc
Eric T. Schneiderman Attorney General

CLERK OF COURT
ALBANY, N.Y.
JUL 13 AM 11:29

Respondents.

State of New York) ss.
County of Franklin)

- Kenneth Samuels, being duly sworn, deposes and says:
- I am the Petitioner in this proceeding.
 - I am a prisoner of the State of New York incarcerated at upstate Correctional facility, in the County of Malone and State of New York.
 - I am about to commence this proceeding for a judgment pursuant to Article 78 of the Civil Practice Law and Rules.
 - I make this affidavit in support of my application for a reduction of the filing fee pursuant to CPLR 1101(f)
 - I currently receive income from the following sources exclusive of prison wages: NONE

2. I own the following property, excluding miscellaneous personal property: NONE
1. I have no Savings, property assets or income other than as set forth herein
3. I am unable to pay the total Filing Fee necessary to prosecute this action.
1. I do not know of any attorney who is willing to represent me in this proceeding, and therefore desire that an attorney of suitable experience be assigned to represent me in this proceeding without compensation.
1. I am presently incarcerated and lack the resources to personally serve the respondents and Attorney General of the State of New York and therefore request the Court to provide for an alternative method of service of process by regular first-class mail by the Clerk of the Court or other responsible person on my behalf or allow me to do so.
- No previous application has been made for the same or similar relief sought herein.

WHEREFORE, I request that I be permitted to proceed as a poor person in this proceeding or by reduced Filing Fee, and

THAT the Court assign a suitable attorney to be counsel for that purpose, and


THAT the Court assign the Clerk of Court or some other responsible person to assign the index number and conform all copies in this proceeding, to serve all necessary documents on my behalf or allow me to serve them by regular mail, and to return one informed copy of each document to me.

Affidavit in Support
Filing fee



Kenneth Samuel Prose
Petitioner

Sworn to before me this 9
day of June, 2011


Notary Public

Donna J. Mainville
Notary Public State of New York
New York State No: 01MA6221161
County of Franklin
My Commission Expires on: 05/24/2014

AUTHORIZATION

Albany County Clerk
Document Number 10918417
Rcvd 07/11/2011 10:35:51 AM

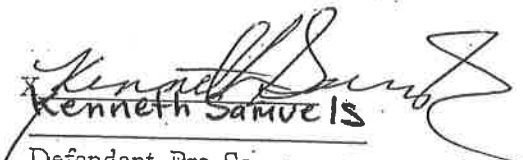


I, Kenneth Samuels, request and authorize the agency holding me in custody to send to the Clerk of the Court certified copies of the correctional facility trust fund account statement (or the institutional equivalent) for the past six months.

I further request and authorize the agency holding me in custody to deduct the amount of the filing fee ordered by the Court pursuant to CPLR 1101 (f) (2) from my correctional facility trust fund account (or institutional equivalent) and to disburse such amount as instructed by the Court.

This authorization is furnished in connection with the above entitled case and shall apply to any agency into whose custody I may be transferred.

I UNDERSTAND THAT THE ENTIRE FILING FEE AS DETERMINED BY THE COURT WILL BE PAID IN INSTALLMENTS BY AUTOMATIC DEDUCTIONS FROM MY CORRECTIONAL FACILITY TRUST FUND ACCOUNT EVEN IF MY CASE IS DISMISSED.


Kenneth Samuels
Defendant, Pro-Se

Sworn to before me this 6
day of July, 2011


Notary Public

Ashley M. Hebert
Notary Public State of New York
New York State No. 01HE6221166
County of Franklin
My Commission Expires on: April 26, 2014

ALBANY, N.Y.
11 JUN 13 AM 11:29
CLERK OF COURT
ALBANY COUNTY

NYS DEPT OF CORRECTIONS
209-INMATE BALANCE SCREEN

11:43:19

NYSID: 07477295Z

DOB: 06/03/75

FULL NAME: SAMUELS KENNETH

DIN: 97A0331

PHONE: (518) 483 6997 EXT: 2000

FAX: (518) 483 6997 EXT: 2099

CURRENT FACILITY: UPSTATE

SPENDABLE BALANCE: 0.04

```
*****
*                ENCUMBRANCES                *
*                TOTAL:                0.00    *
*                COLLECTED:                0.00  *
*                OUTSTANDING:                0.00 *
*****
```

	SPENDABLE FOR LAST SIX MONTHS
OLDEST	0.00
	87.85
	70.64
	107.44
\\	61.56
NEWEST	51.47

TOTAL DEPOSITS FOR LAST SIX MONTHS
17.46
150.00
3.95
83.00
0.00
0.00

NEXT DIN:

ANOTHER LOOKUP - KEY NEXT DIN PRESS <ENTER> RETURN TO MENU PRESS <PF3>

Albany County Clerk
Document Number 10918417
Rcvd 07/11/2011 10:35:51 AM



REQUEST FOR JUDICIAL INTERVENTION
SUPREME COURT - ALBANY COUNTY

INDEX NUMBER - 4127-11

Albany County Clerk
Document Number 10934487
Rcvd 08/03/2011 11:07:16 AM

Kenneth Samuels 97-A-0331

FILE

Petitioner

-versus-

Brian Fischer, Commissioner Of DOCS; Eric T.
Schneiderman, Attorney General

Respondent

01-11-SI2854

Judge Assigned

RJI Number

For a Judgment Pursuant to Article 78 of the CPLR

NATURE OF JUDICIAL INTERVENTION

--- ORDER TO SHOW CAUSE (Return Date - 09-09-2011)

NATURE OF ACTION OR PROCEEDING

--- SPECIAL PROCEEDING - Article 78

Plaintiff's Attorney: name & address

Kenneth Samuels
Upstate Correctional Facility
P. O. Box 2000
Malone, NY 12953

Defendant's Attorney: name & address

Eric T. Schneiderman

Parties appearing without an attorney should enter information in the space provided above for attorneys.

RELATED CASES (If none, write "NONE" below)

Title	Index #	Court	Nature of Relationship
-------	---------	-------	------------------------

I affirm under penalty of perjury that, to my knowledge, other than as noted above, there are and have been no related actions or proceedings, nor has a request for judicial intervention previously been filed in this action or proceeding.

Dated:

7/27/11


Signature


(Print or type name)



REQUEST FOR JUDICIAL INTERVENTION
SUPREME COURT - ALBANY COUNTY

INDEX NUMBER - 4127-11

FILE

Albany County Clerk
Document Number 10934487
Rcvd 08/03/2011 11:07:16 AM

Kenneth Samuels 97-A-0331

GEORGE D. CERESIA, JR.

Petitioner 01 11-ST2854

IAS Entry Date

-versus-

Brian Fischer, Commissioner Of DOCS; Eric T.
Schneiderman, Attorney General

Judge Assigned

Respondent

RJI Number

For a Judgment Pursuant to Article 78 of the CPLR



NATURE OF JUDICIAL INTERVENTION

--- ORDER TO SHOW CAUSE (Return Date - 09-09-2011)

NATURE OF ACTION OR PROCEEDING

--- SPECIAL PROCEEDING - Article 78

Plaintiff's Attorney: name & address

Kenneth Samuels
Upstate Correctional Facility
P. O. Box 2000
Malone, NY 12953

Defendant's Attorney: name & address

Eric T. Schneiderman

Parties appearing without an attorney should enter information in the space provided above for attorneys.

RELATED CASES (If none, write "NONE" below)

Title	Index #	Court	Nature of Relationship
-------	---------	-------	------------------------

I affirm under penalty of perjury that, to my knowledge, other than as noted above, there are and have been no related actions or proceedings, nor has a request for judicial intervention previously been filed in this action or proceeding.

Dated:

7/27/11

Signature

Kenneth Samuels
(Print or type name)



FILE

JP

Supreme Court of the State of New York
County of Albany
In the Matter of the Application of
Kenneth Samuels
Petitioner

4/27-11

for a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Petition

- against -

RJI #:

Index No.

Brian Fischer, Commissioner of Doc
Eric T. Schneiderman, Attorney General

11 JUN 13 PM 11:29
CLERK OF SUPREME COURT
ALBANY, N.Y.

Respondents.

To The Supreme Court of The State of New York

The Petition of Kenneth Samuels respectfully alleges
that:

.. This is a special proceeding brought pursuant to Article
78 of the Civil Practice Law and Rules (CPLR)

VENUE

.. Pursuant to CPLR sections 7804 and 506(b), Venue of this
Proceeding is Albany because this is where Respondents
has his principal office.

5. This Petition Challenges a disciplinary action taken against the petitioner on November 23, 2010, at Sing Sing Correctional Facility which resulted in the petitioner being placed in the Special housing Unit for 30 Months, 12 months recommended lost of good time, loss of privileges.

PARTIES

1. The Petitioner Kenneth Samuels is an prisoner incarcerated in the Custody of the New York State Department of Correctional Services (hereinafter referred to as DOCS) at Upstate Correctional Facility its Address P.O. Box 2001, Malone, NY 12953.

2. Respondent Brian Fischer is the Commissioner of DOCS. In that capacity, he is the Chief Executive Officer of the Department and has the Statutory authority and responsibility to review decisions and ~~actions~~ actions of Tier III Hearings pursuant to DOCS regulations.

3. Respondent Albert Prack is the Director of Special Housing Unit. And as such rendered his determination on behalf of the Commissioner Brian Fischer affirming petitioner administrative Appeal.

4. Respondent Eric T. Schneiderman is the Attorney General and as such is the representative of the above name respondent.

5. On or about November 2010, the Petitioner was a prisoner at Sing Sing Correctional Facility in Ossining New York. As a result of an assault on Petitioner on 11/16/10, Petitioner

was charged with violating disciplinary rules.

3. On 11/16/10 Petitioner and several other prisoners had just returned from counsel callouts. Upon entering B-block housing unit, Petitioner took his net bag containing his shower gear out of a plastic bag located at the entrance of the block and proceeded to Q-gallery to wait on line for the bathhouse run per normal policy and procedure.
- D. While waiting in line 20 minutes or more Petitioner asked C.O. Ronald Woody "what was the holdup" he responded "A-block running movies". Petitioner then asked if he could go back to his cell skipping the bathhouse and proceed to the yard upon the return of the bathhouse, he responded "no you put down for the bathhouse you have to go to the bathhouse". Ten minutes had elapsed when an announcement was made informing inmate on the bathhouse run to return all cigarettes back to their cells, bathhouse going out. Petitioner along with several other prisoners proceeded to their cell to return the cigarettes.
11. Upon returning C.O. Dalton called down to C.O. Timothy Bellinger stating stop that inmate coming off of R-gallery C.O. Bellinger informed C.O. Dalton that the inmate had just returned cigarettes back to his cell on W-gallery per the announcement. C.O. Dalton responded I didn't call W-gallery send him back. Petitioner explained that he had been on Q-gallery waiting for the bathhouse run prior to the announcement... C.O. Dalton responded I didn't call W-gallery take it back and lock in. Petitioner proceeded back

to the gallery while complaining to C.O. Bellinger. When C.O. Woody stated sarcastically "you shouldn't have put down for the bathhouse any way"... Petitioner responded mind your fucking business no one talking too you while proceeding down R-gallery to his cell.

2. While waiting for the cell to be opened Petitioner was approached by C.O. Woody, Bellinger and Dalton who began pushing petitioner back the way he had come. As petitioner proceeded down the gallery he was punched several times in the back of the head for no reason. Petitioner turned around and stated while back-pedaling all the is unnecessary" and received several more unrestrained blows to the face. Petitioner attempted to flee and was grabbed by the collar of his shirt by C.O. Woody, as they began to pull their night sticks Petitioner attempted to brake the hold on the collar of his shirt but could not, fearing further assault. Petitioner attempted to defend him-self as he was hit with their night sticks with utter disregard or concern, upon falling to the floor the assault continued until Sgt Barnes ordered them to stop. Petitioner was cuffed and held in the Shower for 30 minutes or more then taken to medical, thereafter the hospital.
3. On or about 11/21/10 Petitioner appeared at a tier III hearing.
4. At the hearing the hearing officer (herein after H.O) read the charges against Petitioner. They included allegations of Violent conduct 2 counts, Creating a Disturbance 2 counts, Assault on Staff 2 counts Refusing Direct order 2 counts, out of Place, Movement Regulation Violation and Interference with Employee.
5. Petitioner entered a plea of not guilty to all charges.

6. During the hearing Petitioner informed the H.O. that he had been discouraged from selecting an assistant by a Sergeant and lieutenant whom were accompanied by officer R. L. Ortiz who served Petitioner the Misbehavior Reports. Petitioner then informed H.O. of the need for an assistant providing H.O. with all the necessary information needed to locate and produce eye-witnesses, and documents. In response to Petitioner's request the H.O. stated: "Who is going to find your witnesses not me I'm not going to do any running around for you, you had your chance to an assistant to do it for you but you refused. However after an off the record discussion H.O. said an assistant would be assigned."

7. Petitioner met with the H.O.'s selected assigned assistant and informed him of the witnesses Petitioner wanted interviewed and the documents need in support of his defense. The hearing had reconvened after Petitioner had met with the assistant but not before the assistant had returned with the results of the interviews or the requested documents. Petitioner attempted to make a record concerning the failures of the assistant but was cut off by the H.O. who stated "now your going to start lying on your assistant."

8. Further throughout the hearing, each time the H.O. read the misbehavior Reports he would read the portion relating to the officers actions in a passive manner. However when reading the portion that referred to Petitioner's alleged action, the H.O. would raise his tone of voice with great anger and disgust. Additionally, while taking the officers testimony, the H.O. would fraternize with them

asking them how they are doing, wishing them well and happy holidays, talk with them in a kind and friendly manner. He would lead the answers to their questions, and would let them answer the question without interruption. The H.O. was clearly biased and impartial. The first statement to the first witness (officer) was: You were called here as a witness to an incident that took place where you were viciously assaulted by Samuels. On the contrary, the H.O. would speak harsh and cruelly to the prisoner's, interrupting their answers to Petitioner questions or asking questions before they could finish their answer, precluding them from providing a full answer to the questions. The biased and impartial conduct of the H.O. went on throughout the hearing.

9. At no time during the hearing was the Petitioner afforded the following minimal due process rights:

The right to a Misbehavior Report prepared in accordance with the provision of 7 NYCRR Chapter V Section 251-3.1(b), (c)(1);

The right to witnesses, adequate assistant, relevant documentary evidence in accordance with the provision of 7 NYCRR Chapter V section(s) 253.5; 251-4.1, 251-4.2; 253.6(c);

The right to a hearing conducted in a fair and impartial manner in accordance with the provisions of 7 NYCRR Chapter V Section 253.1(b)

20. An administrative appeal was filed on or about 1/20/11 with the respondents office; Brian Fischer Commissioner.

21. By notice dated 2/14/11 Petitioner was notified that the tier III hearing decision was affirmed. Attached hereto as Exhibit A.

Cause of Action

The hearing officer denied Petitioner of his due process right to a fair and impartial hearing when he arbitrarily & capriciously refused to evaluate and/or except Petitioner's claim of self-defense and had pre-determined Petitioner's guilt before all the evidence had been presented.

2 The fourteenth Amendment to the Constitution provides that "no state shall ... deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, sec 1. Although prison inmates necessarily have their liberty severely curtailed while incarcerated, they are nevertheless entitled to certain procedural protections when disciplinary actions subject them to further liberty deprivations such as loss of good-time credit or special confinement that imposes an atypical hardship. See *Wolff v McDonnell*, 418 U.S. 539, 555-56 (1974); *Alwasinski v. Morse*, 201 F3d 103, 108 (1999) (per curiam) (concluding atypical confinement may not be imposed without providing procedures enumerated in *Wolff*); See also *Luna v Pico* 336 F3d 481, 487 (2004) (same). Given procedural posture of this case, it is safe to assume, without deciding, that Petitioner's thirty month confinement in special housing unit imposed an atypical hardship entitling him to due process. See generally *Alwasinski* supra at 107-08 (discussing factors relevant to deciding if confinement in special housing unit constitutes an atypical hardship).

3 The due process protections afforded a prison inmate do not equate to "the full panoply of rights" due to a defendant in a criminal prosecution. *Jolff, Supra* at 356, 367-70. Nevertheless, an inmate is entitled to advance written notice of the charges against him; a hearing affording him a reasonable opportunity to call witnesses and present documentary evidence; a fair and impartial hearing officer; and a written statement of the disposition, including the evidence relied upon and the reason for the disciplinary action taken. See *id* at 363-7; accord *Luna, Supra* at 487; *Kalwasinski, Supra* at 108.

4 It is well recognized that the degree of impartiality required of prison hearing officials does not rise to the level of that required of judges generally. Because of the special characteristics of the prison environment, it is permissible for the impartiality of such officials to be encumbered by various conflicts of interest that in other contexts would be adjudged of sufficient magnitude to violate due process. *Cleavinger v. Saxner* 474 US 193, 203-204 (1985). This fact, however, is not dispositive of the claim at issue here, where, Petitioner's factual claim that the H.O. was less than a neutral arbiter having pre-determined Petitioner's guilt prior to the conclusion of the hearing or the introduction of all the evidence. Petitioner had no chance to prevail in spite of his testimony concerning the factual and viable defense of self-defense and the evidence possessed by the H.O.

5 The touchstone of the right to due process is freedom from arbitrary governmental action. *Ponte v. Real* 471 US 491, 495 (1985). Due process requires not simply that an inmate facing a loss of liberty receive a hearing, but that he receive a fair hearing. See, e.g., *Grillo v. Coughlin*, 31 F3d 53, 56 (1994). It is axiomatic that a prison disciplinary hearing in which the result is arbitrarily

and adversely predetermined violates Petitioners due process rights as guaranteed by the constitution and the applicable agency regulation were violated an annulment of the determination is therefore required *Williams v Lefevre* 90 AD2d 379 (1982).

It has been held that in a prison disciplinary proceeding an inmate has the right to an impartial hearing officer *Ellison v Goord* 267 AD2d 968 (1999) and to a fair and impartial disciplinary hearing *Hamlett v Goord* 255 AD2d 497 (2000). The record in this case depicts the actions displayed by the H.O. throughout the disciplinary hearing serves to viliate the requirement of impartiality in acting as a fact finding body, which is an essential element of minimal due process. *Ponte, supra*, at 495. Indeed, the N.Y. regulations expressly provide that the disciplinary hearing officer is responsible for conducting disciplinary hearing in an impartial manner N.Y. Comp. Codes R. & Regs. tit 7. Sec 253.1(b).

Thus, an inmate is held to have been denied his right to an unbiased and impartial hearing officer where the hearing officer asked leading questions, the hearing officer provided most of the witnesses answers, telling witnesses petitioner's defense which allowed them to margin there answers against the defense, interrupting witnesses by asking several questions before the witness finished answering the initial question, refusing at times to ask question that were based on contradictory testimony or statements made by witnesses, the hearing officer would read the misbehavior report in lieu of the questions asked by petitioner or just reading misbehavior to witnesses ~~without~~ prior to allowing them to answer questions. (see Record)

Likewise, a determination finding an inmate guilty of violating certain disciplinary rules would be annulled, where the hearing officer's remarks and demeanor throughout the hearing indicated bias against

petitioner. Such was the case here, where the bias against petitioner is evident from statements and remarks by the H.O. to the first witness called. The H.O. made the following statement: Officer Bellinger...you were called here as a witness in an incident where you were viciously assaulted by Samuel. There was nothing in the misbehavior reports stating that petitioner viciously assaulted Officer Bellinger.

4 It is well established that an inmate facing a disciplinary hearing is entitled to a fair and impartial hearing officer (NYCRR sec. 253.1, 254.1 (guaranteeing right to impartial hearing officer)).

Thus, petitioner was denied his right to due process when the H.O. expressed his own personal opinion, feelings and emotions concerning a incident he was not a witness and was suppose to have been a impartial and fair hearing officer Ponte, Supra at 495.

30 While the H.O. may not have had before him a written signed disposition of petitioner's guilt, the above statement and remarks and demeanor of the H.O. throughout petitioner's hearing shows not only a failure to operate within the principles stated in the controlling regulations but a complete failure to consider in good faith the substance of petitioner's Pino v. Dalasheim 605 Supp 1305, 1318 (1984). Petitioner maintained that he acted solely in self defense, and there was nothing in the record to refute petitioner's explanation, give no witnesses had testified. The H.O.'s failure to make a distinction between petitioner's assertion of self defense and the issue of culpability. This is evident from the H.O.'s personal opinion directly to an incident to wit he was not a witness too; such a predetermination of petitioner's guilt prior to the conclusion of the hearing and the introduction of all

the evidence was a patent violation of petitioner's rights and the regulations of the New York State Department of Correctional Services *Burke v Coughlin* 97 AD2d 862 (1983).

In this case, just as in *Marquez v Mann* 600 NY32d 285 (1993) it can not be disputed that Petitioner actions were justified as per the misbehavior report signed by Officer Woody, it would be impossible to strike Petitioner on his shoulder and back area when the officer claimed that Petitioner took up a fighting stance and struck him 2 times on the left side of the facial area. How can Petitioner punch the officer on the left side with a left fist, and how is it that the officer attempts to strike Petitioner on the back and shoulder while facing the officer in a fighting stance. Furthermore, Petitioner injuries are consistent with an assault from the front! Moreover, is the inconsistency between the two reports in which Officer Woody claims after Bellinger had been struck he responded by using the body hold. However, Bellinger himself claims that after he was struck it was him who attempted to gain control over Petitioner by using a body hold. The report signed by C.O. Woody does not mention C.O. Bellinger attempt to apply this body hold none does the report of C.O. Bellinger mention C.O. Woody's attempt to apply this body hold. Each of these reports are a fabrication of the facts written to cover up their assault against Petitioner.³

Sergeant Bernes testified at Petitioner's hearing regarding his observations stating in part on the night in question he observed an inmate later determined to be Petitioner walk down the gallery at a fast pace followed by officers. Sgt Bernes establishes that Petitioner was not being escorted but pursued.

33 Nevertheless, the failure of the H.O. Conducting the Superintendent's Proceeding to consider in good faith the substance of petitioner's defense extends the mockery of due process and renders the Superintendent's Proceeding an empty formality. *Pino, Supra*, at 1318. Serious consideration of Petitioner's testimony may have worked to mitigate his behavior *Santana v Coughlin* 90 AD2d 947 (1982). In effect, the H.O.'s conclusory assumption of culpability merely upon petitioner's factual claim of self defense served to deprive petitioner of his right to due process. *Cook v Coughlin* 91 AD2d 663 (1983).

34 It is conclusively established the rules and regulation outlined in Directive 4932 7NYCRR Chapter V Subchapters A and 2 are binding on the Department of Correctional Services because it relates to the internal management of the department (see NY Const., art IV sec 8). Under these circumstances, the department must comply with its own rules (cf *Rodriguez v Ward* 4 AD2d 792 (1978); *Williams, Supra*; (requires annulment of the determination) The same is also required here, where the H.O. failed to provide petitioner with a fair hearing conducted by a fair and impartial hearing officer, followed by the failure to consider the defense raised by petitioner deprived petitioner of his right to due process, requires annulment of the determination.

Petitioner was deprived of his right to witnesses and adequate assistance in violation of his right to due process and Departmental rules and regulations.

5 The starting point for any Constitutional analysis of prison disciplinary procedures is obviously the Supreme Court's decision in *Wolff v. McDonnell* 418 U.S. 539 (1974). The court in *Wolff* set forth the minimum requirements of procedural due process for inmates facing disciplinary proceedings which would result in the loss of a constitutionally protected liberty interest. Although *Wolff* was concerned primarily with an inmates potential loss of good-time credits, the Second Circuit ruled in *McCann v. Coughlin* 698 F.2d 112 (2d Cir 1983), that where an inmate faces a possible punishment of at least fourteen days in keeplock, or more serious deprivation of any period of confinement in SHU, he is confronted with a sufficiently serious deprivation of his liberty to require that he be accorded due process protection. See *id.* at 121. Thus, there can be no doubt that Petitioner was entitled to basic due process protections when he was subjected to the disciplinary proceedings.

6 In addition to the procedural due process requirements of the Federal Constitution, New York State has enacted a comprehensive set of laws and regulations applicable to the prison disciplinary process (see 1NYCRR Chapter V).

7 The instant case reflects respondents failure to follow their own rules and regulations pertaining to the investigation and interviews requested by petitioner requires annulment of the determination. *Williams v. Lefevre* 80 AD2d 319 (1982); *Johnson v. Smith* 83 AD2d 721, 722 (1982); *Longo v. Fogg* 1 AD2d 955 (1982).

8 Thus, Petitioner contends and the record reflects that petitioner had

informed the H.O. that he was threatened and discouraged from selecting an assistant and that Petitioner had in fact wanted an assistant to interview witnesses and gather evidence in support of his defense. The record further reflects that Petitioner informed the H.O. of the locking location of the witnesses he wished to be called as well as evidence (go around List) which contains the locking location of other potential witnesses. The hearing was adjourned and reconvened after Petitioner had met with the assigned assistant but not before the assigned assistant had returned with the results of his interviews or the requested documents.

⁹ The Supreme Court in *Wolff v McDonnell* 418 US 539 (1974) indicated that in certain circumstances inmates subjected to disciplinary charges have the right to assistance in preparing their defense, when an inmate is as in this case placed in restrictive confinement. The Second Circuit has held that the 14th Amendment requires that the prison provide the inmate with assistance in obtaining evidence and interviewing witnesses. *Eng. Coughlin* 888 F.2d 889, 897-98 (1988). In addition, an inmate's due process rights are violated when a prison hearing officer refuses to interview a witness without assigning a reason "logically related to preventing undue hazards to institutional safety or correctional goals." *Ponte v Real* 471 US 491, 497 (1985). The burden is not upon the inmate to prove the official's conduct was arbitrary and capricious, but upon the official to prove the rationality of his position. *Id.* at 499.

¹⁰ Here, neither the assigned assistant nor any other prison official interviewed any "witnesses" requested by petitioner, this is clearly evident from the (record) testimony of the prisoner's present at the

hearing, of the five prisoners presented at petitioners hearing none witnessed the incident. Two testified to being in the yard at the time petitioner was assaulted, two others testified that they were locked in the Shower or Slop Sink at the time petitioner was assaulted. The fifth testified that he saw petitioner getting in line for the bathhouse, sometime later saw petitioner on the gallery prior to the assault on petitioner and again from the gallery below after petitioner had been assaulted. Aside from the actual witnesses requested by Petitioner (22 cell to double bunk cell), Petitioner also requested the go around list which contained the locking locations of other witnesses. The record clearly reflects Petitioner's request as well as the H.O. position concerning Petitioner's request for witnesses assistance and the go around list, a similar request was made to the assigned assistant² Fox v. Coughlin, 893 F2d 475, 478 (1990).

11 Based upon Wolff, Supra; McCann, Supra, at 120-125, the two most relevant decisions the H.O. along with his selected assigned assistant violated a clearly established right by failing to obtain requested evidence or interview witnesses. Giano v. Sullivan 709 F Supp 205, 1215 (1989) holding failure of assistant to help the Prisoner denied due process; Pino v Dalsheim 605 F Supp 1305, 1318 (1985) holding due

- Petitioner also requested that the H.O's selected assigned assistant obtain the UI Report, use of force report, Photos, and any other report including logbook entries generated as a result of the incident. Petitioner received those documents after the hearing had ended from C.O. Ortiz (no photo or logbook entries). The unusual Incident Report shows both Officer had injuries to their hands, consistent with have thrown punches, and the only injury complained of by Woody was to the hand despite his claim petitioner punched

process was violated by assistant's failure to carry out basic reasonable and non-disruptive request. See *Ayers v Ryan* 152 F3d 7, 81 (1998); *Hendricks v State of New York Dept of Corr Services* 165 AD2d 923, 924 (1990) holding assistant's failure to assist violated state regulations. It is clear, neither the H.O. nor his selected assistant conducted an investigation or interviews (see presented prisoner's testimony) despite the information provided by petitioner which was sufficient to allow the H.O. and the assistant to locate and interview witnesses to obtain and produce evidence without great difficulty; failure to do so constituted a violation of due process as well as a violation of respondents own regulations *Cooper v. Smith* 15 Misc2d 689 (1982); *Wolf, Supra*, at 338.

12 In *Zamakshari v Dvoskin* 899 F.Supp 1097, 1107-08 (1995) where inmate requested a gallery list in order to identify other potential witnesses the court held prison officials were not required to produce such a list "if it were not available." Here the H.O. simply stated he did not know if the list were kept and failed to make the necessary inquiry. This case can be readily distinguished from *Kingley v Bureau of Prisons* 937 F2d 26, 30-31 (1991) where the Second Circuit determined that an inmate's inability to identify potential witnesses did not constitute a waiver of his right to call those witnesses. In this case the record demonstrates that neither the H.O. nor his selected assigned assistant made an effort to secure the testimony of the actual witnesses alleged by petitioner to have witnessed the incident. These facts are evident from the testimony of the prisoner presented at petitioner's hearing. The right to call witnesses would admittedly not be meaningful if prison officials made no attempt to locate or identify witnesses that were requested. New York State requires a "meaningful effort" to locate witnesses *Rodriguez v Coughlin* 143 Misc2d 876

1989). Moreover, the witnesses who had returned with petitioner from counsel callout would have testified contrary to the events which gave rise to the report signed by Officer Bellinger. Under these circumstances the H.O. should have made a meaningful effort to secure the testimony of the witnesses requested by petitioner.

3 Just as in the cases cited by petitioner, where the inmate provided the cell block information and which callout the potential witnesses had come from to facilitate locating the witnesses and therefore, this Court should find that prison officials were required to have made at least some effort to locate the potential witnesses when "it should be relatively easy to locate the witnesses requested and not unduly burdensome on the administration *Cooper, Supra*; *Lodriguez, Supra*, at 477-478.

4 The request made by petitioner to locate go around list was a reasonable request that requires prison officials to act, under these circumstances the failure raises to the level of a constitutional requirement, and would likely raise to the level of a state law requirement. *Blake v Coughlin* 189 AD2d 1016, 1017 (1993); *Contras v Coughlin* 199 AD2d 601, 603 (1993); *Luareano v Kuhlmann* 75 NY2d 141, 146 (1990). Petitioner's conditional right to call witnesses is a constitutional right which is implemented by 7 NYCRR 254.8; see *id* at 146-147.

5 Furthermore, where the record does not reflect as in the case here, any reason for the witnesses refusal to testify, or that any inquiry was made of them as to why they refused or that the H.O. communicated with the witnesses to verify their refusal to testify there has been a denial of the inmates right to call witnesses as provided in the regulations *Burnes v. Lefevre* 69 NY2d 649, 650 (1986); *Rega v Smith*, 66 NY2d 130 (1985); *Silva v Scully* 139 AD2d 717 (1988). The courts have made it clear that an accused inmate's right

to present "witnesses" and submit other evidence in support of his defense is constitutionally protected and if necessary abridged judicially enforceable and hence said "few right are more fundamental than that of an accused to present witnesses in his own defense *Chamber v. Mississippi* 410 US 284, 302 (1975); *Washington v. Texas* 388 US 14, 19 (1967). Thus, respondents violation of their own regulations under the circumstances here was also a violation of petitioners constitutional right to call witnesses such a violation necessitates dismissal of the charges upon which the hearing was held and expungement of the tainted proceeding *Rosario v. Selsky* 52 AD2d 939 (1990).

47 In conclusion, upon review of the record, it should be this court's conclusion that the determination must be annulled because petitioners constitutional and regulatory rights to call witnesses was violated (see *Wolff*, supra, at 566; *Laureano* supra) along with his right to adequate assistance *Hendricks*, supra.

The hearing officer determination should be reversed and dismissed upon the grounds that the two Misbehavior Reports were defective and written in violation of departmental directive 4932 and 7 NYCRR 251.3

¹⁸ In the present case both misbehavior reports were written completely in unknown person who did not signed nor endorse any of the two Misbehavior reports. The unknown author of both reports went as far as to print the names of correction officer's Timothy Bellinger and Ronald Moody on the bottom of the reports. Nowhere on any of the reports did the unknown officer print or sign his/her name nor state that he/she was a witness to the incident in complete violation of Departmental Directive 4932 Section 251-3.1

¹⁹ When petitioner objected upon the ground that the reports were not written by the author's but by an unknown person who had not witnessed the incident the H.O. did not deny this factual claim but rather in a loud antagonistic voice stated: "So what", is there anything illegal about that, No there not. There is nothing illegal about that. There is nothing wrong with that, while interrupting my objection and not allowing me to speak. (See Exhibit B)

It has been well established that an administrative agency is bound by its own regulations which have the full force and effect of the law. *Severino v. Lagraham* 59 AD2d 587 (1977); *Chamber v. Coughlin*, 76 AD2d 980 (1980). Having been bound by these rules and regulations and violating them DOC's has cause the proceeding complained of within to be nullity. *Howard v. Coughlin*, 190 AD2d 1090 (1993); *Rollinson v. Scully*, 181 AD2d 734 (1992)

¹ Departmental Directive 4932 Section 251-3.1(b) Comprehensively States:
in part:

The misbehavior report shall be made by the employee who has observed the incident or who has ascertained the facts of the incident.

² Thus, there is nothing in said directive which permits anyone other than the person who has observed the incident or who has ascertained the facts of the incident to write the misbehavior report. Hence, the only witnesses to the incident were Bellinger and Woody and neither are the actual authors of the misbehavior report. But assuming arguendo that the author of the misbehavior report had observed or ascertained the facts of the incident he/she failed to state that in the body of the misbehavior report and failed to endorse his/her name in the report in violation of Departmental Directive 4932 Sec. 251-3.1(b) which further states:

Where more than one employee has personal knowledge of the facts each employee shall make a separate report or where appropriate each employee shall endorse his or her name on a report made by one of the employees.

³ The author of both reports was not identified nor did he/she testify at the hearing petitioner was therefore deprived of a witness. As the H.O. refused to hear petitioner's contentions by the H.O. claims that there was nothing legal about an unknown person writing both reports. Thereby, the H.O. violated petitioner's due process right and failed to follow and comport the hearing by the Department's own rules and regulations. *Vitorelli v. Seaton* 339 U.S. 335 (1959); *Paul v. United States* 371 U.S. 245 (1963); *United States ex rel. Checkman v. United* 469 F.2d 773 (2nd Cir. 1972); *Giampetzi v. Malcom* 406 F.Supp. 836 (1973)

No previous application has been made to any court for the Relief requested herein.

Wherefore, the Petitioner request that a Judgment under CPLR Article 78 be granted:

1. Reversing the decision of the Respondent Brian Fischer which affirmed a Tier III hearing decision and declaring it null and void;
2. Order the Respondent(s) Brian Fischer, or whoever else shall have care and custody of the Petitioner's records to expunge all entries of the said Tier III Hearing, the decision and appeal and underlying Charges from all of Petitioner's records including but not limited to institutional and departmental and parole records;
3. Restoring the Petitioner in all respects to the status he enjoyed prior to the Commencement of the Tier III Hearing, including restoration of 365 days good time and release from SHU
4. And for such other and further relief as the court deems just and proper.

Dated: June 9, 2011
Franklin County

Kenneth Samuels ProSe
Kenneth Samuels
P.O. Box 2001
Malone, New York 12953.

VERIFICATION

JB

State of New York)
)SS:
County of Franklin)

Kenneth Samuels, Being duly sworn, deposes and says that deponent is the Claimant in the within action; that deponent has read forgoing Claim and knows the contents there of; that the same is true to deponent's own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true

Kenneth Samuels pro se

Sworn to me this 9 day
of June, 2011

Donna J. Mainville
Notary Public

Donna J. Mainville
Notary Public State of New York
New York State No. 01MA6221161
County of Franklin
My Commission Expires on: 05/24/2014

EXHIBIT

A

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

BRIAN FISCHER
COMMISSIONER

LUCIEN J. LECLAIRE, JR.
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: SAMUELS, KENNETH

NO. 97A0331

8C40T

HEARING FACILITY: SING SING

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT
LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF
NOVEMBER 23, 2010, HAS BEEN REVIEWED AND AFFIRMED ON FEBRUARY 11, 2011.

ALBERT PRACK
DIRECTOR, SPECIAL HOUSING/
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT
CENTRAL OFFICE FILES

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL
HOUSING/INMATE DISCIPLINE PROGRAM.

Guid
IRC
IM

EXHIBIT

B

INMATE MISBEHAVIOR REPORT ◆ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ◆ NOMBRE DEL RECLUSO (Apellido, Nombre) Samuel, K		NO. ◆ NÚM. 97A033	HOUSING LOCATION ◆ CELDA HB3 W20
2. LOCATION OF INCIDENT ◆ LUGAR DEL INCIDENTE HB3 W3 Gallery South		INCIDENT DATE ◆ FECHA 11-16-10	INCIDENT TIME ◆ HORA Approx 7:26 pm
3. RULE VIOLATION(S) ◆ VIOLACIÓN/ES 100.11 Assault 104.11 Violent Conduct 104.13 Disturbance 106.10 Direct Order 107.10 Interference			
4. DESCRIPTION OF INCIDENT ◆ DESCRIPCIÓN DEL INCIDENTE On the above date and approximate time I observed inmate Samuel 97A033 strike officer Bellinger in his right eye. I responded to stop the assault by using a body hold but was unsuccessful. Inmate Samuel took up a fighting stance and struck me 2 times with a closed (left) fist to my left side of facial area. He was given several direct orders to stop resisting which he refused. Fearing for my safety and to prevent further assault I drew my baton and attempted to strike the inmate on his shoulder and back area inadvertently striking his head area approximately 3 times. I used a body hold and forced this inmate to the ground and applied mechanical restraints to this struggling inmate Area Supervisor notified			
Served BY CORRECTION OFFICER R. L. Ortiz II 11/17/10 801/A			
REPORT DATE ◆ FECHA 11-16-10	REPORTED BY ◆ NOMBRE DE LA PERSONA QUE HACE EL INFORME R. Woody Jr	SIGNATURE ◆ FIRMA R. Woody Jr	TITLE ◆ TÍTULO CO
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) ◆ ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay)			
SIGNATURES ◆ FIRMAS 1. _____ 2. _____ 3. _____			

NOTE: Fold back Page 2 on dotted line before completing below.

DATE AND TIME SERVED UPON INMATE
FECHA Y HORA DADO AL RECLUSO

NAME AND TITLE OF SERVER
NOMBRE Y TÍTULO DEL QUE ENTREGA

You are hereby advised that no statement made by you in response to the charges or information derived therefrom may be used against you in a criminal proceeding. Por este medio se le informa que no se puede usar ninguna declaración hecha por usted como respuesta al cargo o la información derivada de ella en una demanda criminal.

NOTICE ◆ AVISO

REVIEWING OFFICER (DETACH BELOW STATEMENT FOR VIOLATION HEARING ONLY)

You are hereby notified that the above report is a formal charge and will be considered and determined at a hearing to be held. Por este medio se le notifica que el informe anterior es un cargo formal el cual se considerará y determinará en una audiencia a celebrarse.

The inmate shall be permitted to call witnesses provided that so doing does not jeopardize institutional safety or correctional goals. Se le permitirá al recluso llamar testigos con tal de que al hacerlo no pondrá en peligro la seguridad de la institución o los objetivos del Departamento.

If restricted pending a hearing for this misbehavior report, you may write to the Deputy Superintendent for Security or his/her designee prior to the hearing to make a statement on the need for continued prehearing confinement. Si está restringido pendiente a una audiencia por este informe de mal comportamiento, puede escribirle al Diputado del Superintendente para Seguridad o su representante antes de la audiencia para que haga una declaración acerca de la necesidad de continuar bajo confinamiento, previo a la audiencia.

Dist: WHITE - Disciplinary Office CANARY - Inmate (After review)

Sing Sing

INMATE MISBEHAVIOR REPORT ◆ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ◆ NOMBRE DEL RECLUSO (Apellido, Nombre) Samuels, K		NO. ◆ NÚM. 47A0531	HOUSING LOCATION ◆ CELDA HBB W20
2. LOCATION OF INCIDENT ◆ LUGAR DEL INCIDENTE HBB W Gallery South		INCIDENT DATE ◆ FECHA 11-16-10	INCIDENT TIME ◆ HORA Approx. 7 pm
3. RULE VIOLATION(S) ◆ VIOLACIONES 100.11 inmate shall not assault staff 104.11 inmate shall not engage in violent conduct 104.13 inmate shall not engage conduct causing disturbance in facility 106.10 directly direct only 110 inmate shall not be out of place 109.12 movement			
4. DESCRIPTION OF INCIDENT ◆ DESCRIPCIÓN DEL INCIDENTE On the above date and approximate time I (Co Bellinger) was standing on HBBG - north gallery monitoring the HBBT thouse Mr. I observed inmate Samuels, K 47A0531 returning from a counselor call out and ordered him to return to his cell. At this time inmate Samuels responded "for what am I going to the fucking bathroom now". I then informed the inmate that his gallery was called and gave him a second order to look in until his gallery was called. Inmate became irate and stated "fuck you I'm grown and don't talk to me like that. I gave him a direct order to place his back to the wall and proceed to his cell. Inmate Samuels stopped on W South and dropped his net bag turned and struck me in the right eye with a left clenched fist. I then attempted to gain control over the inmate by using body holds but was unsuccessful. I gave additional orders to stop resisting and he refused all orders. Responding staff arrived and control was finally gained.			
REPORT DATE ◆ FECHA 11-16-10	REPORTED BY ◆ NOMBRE DE LA PERSONA QUE HACE EL INFORME T. Bellinger	SIGNATURE ◆ FIRMA T. Bellinger	TITLE ◆ TÍTULO CO
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) ◆ ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay) Served By RLDR 2/18 11/17/10 800%			

NOTE: Fold back Page 2 on dotted line before completing below.

DATE AND TIME SERVED UPON INMATE
FECHA Y HORA DADO AL RECLUSO

NAME AND TITLE OF SERVER
NOMBRE Y TÍTULO DEL QUE ENTREGA

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NOTICE ◆ AVISO

REVIEWING OFFICER (DETACH BELOW STATEMENT FOR VIOLATION HEARING ONLY)

You are hereby notified that the above report is a formal charge and will be considered and determined at a hearing to be held. Por este medio se le notifica que el informe anterior es un cargo formal el cual se considerará y determinará en una audiencia a celebrarse.

The inmate shall be permitted to call witnesses provided that so doing does not jeopardize institutional safety or correctional goals. Se le permitirá al recluso llamar testigos con tal de que al hacerlo no pondrá en peligro la seguridad de la institución o los objetivos del Departamento.

If restricted pending a hearing for this misbehavior report, you may write to the Deputy Superintendent for Security or his/her designee prior to the hearing to make a statement on the need for continued prehearing confinement. Si está restringido pendiente a una audiencia por este informe de mal comportamiento, puede escribirle al Diputado del Superintendente para Seguridad o su representante antes de la audiencia para que haga una declaración acerca de la necesidad de continuar bajo confinamiento, previo a la audiencia.

Dist: WHITE - Disciplinary Office CANARY - Inmate (After review)

Supreme Court of the State of New York
County of Albany
In the Matter of the Application of
Kenneth Samuels

Petitioner

- against -

Applicant of Service
Index # 4127-11

Brian Fischer Commissioner of DOC
Eric T. Schneiderman Attorney General

Respondent(s)

or a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

State of New York) ss.:
County of Franklin)

I, Kenneth Samuels hereby certify under the penalty of
perjury that on the 27 day of July, 2011, I served by ordinary first
class Mail Order to Show Cause, the Petition, Exhibits and all other
document attached thereto upon the respondents listed below pre
order to Show Cause:

Attorney General, Eric T. Schneiderman
The Department of Law, State Capitol,
Albany, New York 12224

Brian Fischer Commissioner
The Harriman State Campus Building
1220 Washington Avenue
Albany, N.Y. 12226-2050

Albany County Supreme Court
Special Term Clerk, Room 102
Albany County Courthouse
Albany NY 12207

Sworn to me this 18 day of

July 2011
Ashley M. Hebert
NOTARY PUBLIC

Ashley M. Hebert
Notary Public State of New York
New York State No. 01HE6221166
County of Franklin
My Commission Expires on: April 26, 2014

Respectfully,
Kenneth Samuels
Kenneth Samuels

NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICE
UPSTATE CORRECTIONAL FACILITY
CORRESPONDENCE OFFICE

TO: Samuel, K. DIN# 97A0331 CELL: 8C-25B

DATE: 7/28/11

The Correspondence Office is in receipt of your recent correspondence. It is being returned to you for one or more of the following reasons.

- ☐ Disbursement requires an Officer's signature.
- ☐ Inmates are not permitted to use their correspondence privileges to solicit or otherwise commercially advertise for money, services or goods.
- ☐ Free Legal Postage for the week has been used - PAY OWN POSTAGE.
- ☐ MUST include funds for obligations, contract items are NOT permitted.
- ☐ Commitment name and DIN # must appear on front upper left hand corner of envelope or below the return address of the facility along with the back of the envelope.
- ☐ COMPLETE address is required.
- ☐ Free postage is for LEGAL Mail only. This is not Legal Mail.
- ☐ POSTAGE, DISBURSEMENT OR ADVANCE FORM must be attached to mail this correspondence.
- ☒ POSTAGE amount for envelope EXCEEDS amount available, you need to attach a disbursement or additional postage. *you have 1.76 left in free legal*
- ☐ Oversized envelopes (including greeting cards) must be inspected and initialed by a Correction Officer.
- ☐ Correspondence with inmates must be approved by your Counselor.
- ☐ Business Mail may not be sealed.
- ☐ Inmate to Inmate mail may not be sealed.
- ☐ Certified/Return Receipt are special services which inmates are responsible to pay.
INMATE MUST PROVIDE PROOF OF JUSTIFICATION FROM ATTORNEY FOR ADVANCE FOR THESE SERVICES. (Fees are: Certified - \$2.85, Return Receipt - \$2.30)
- ☐ This company is on the Disapproved Vendor List from DOCS Central office.
- ☐ Please provide additional information to validate this as a legal address. If you do not have any information, we will contact Counsel's office for a determination.

jm



FILE

JB

Supreme Court of the State of New York
County of Albany
In the matter of the Application of
Kenneth Samuels

Petitioner

Affidavit in Support
of Order to Show Cause

for a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

RJI #

Index No. 4/27-11

-against-

Brian Fischer, Commissioner of Doc
Eric T Schneiderman, Attorney General

Respondents

State of New York)
County of Franklin)

COM. CLERK
11 JUN 13 AM 11:29
ALBANY, N.Y.

Kenneth Samuels, upon being duly sworn, deposes and says:

1. I am the Petitioner in this proceeding
2. I make this affidavit in support of my Petition pursuant to Article 78 of the Civil Practice Law and Rules that this Court reverse and vacate the determination made by Respondents on 2/11/11 that determination was rendered in violation of the Petitioner's due process rights, NYS DOCS Policy, Protocols Directive, and Procedure and was not supported by substantial evidence.

3. Petitioner designates Albany County as place of venue

The basis of venue is the Respondents main office is located in Albany County.


4. Petitioner seeks to proceed by order to show cause because by being incarcerated he cannot effect personal service on respondent and respectfully request that timely service by mail be deemed sufficient.

5. Petitioner seeks to proceed by order to show cause rather than notice of petition because he is currently confined at Upstate Correctional Facility, Malone NY.

No previous application for the same or similar relief herein prayed for has been made.

Wherefore, Petitioner respectfully ask for an order directing the Respondent show cause why a judgment should not be entered pursuant to article 78 of the CPLR challenging respondents determination rendered on 2/11/11, affirmed in toto; because the determination was rendered in violation of the petitioners due process rights, NYS DOC Policy, Protocol, Directive and Procedure and was not support by substantial evidence.

Dated


Kenneth H. Samuels

Sworn to before me this

2 day of June 2011


NOTARY PUBLIC

Donna J. Malville
Notary Public State of New York
New York State No. 01MA6221161
County of Franklin
My Commission Expires on: 05/24/2014

Albany County Clerk
Document Number 11025971
Rcvd 11/15/2011 12:32:42 PM



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

FILE

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

BARBARA D. UNDERWOOD
SOLICITOR GENERAL

Telephone: 518-474-5305

August 24, 2011

Hon. Diane Hook
Special Term Clerk
Supreme Court
Albany County Courthouse, Room 102
Albany, New York 12207

Re: *Matter of Samuels v. Fischer, et al.*
Albany County Index No. 4127-11
Special Term Date: September 9, 2011

Dear Ms. Hook:

This letter is to confirm a six-week adjournment of the above proceeding to October 21, 2011, which was granted by the justice assigned to the Special Term indicated above. This is a first adjournment in this case.

Accordingly, this proceeding is adjourned to October 21, 2011, and respondent(s)' time to submit is extended to October 14, 2011.

If you have any questions, please do not hesitate to call me. Thank you for your courtesy.

Respectfully,

DEBORAH J. STILSON
Legal Assistant II

cc: KENNETH SAMUELS
97-A-0331
Upstate Correctional Facility
P.O. Box 2000
Malone, New York 12953

Albany County Clerk
Document Number 11025971
Rcvd 11/15/2011 12:32:42 PM



Kenneth Samuels
Po. Box 2001
Malone, New York 12953

FILE

DB

Special Term Clerk
Supreme Court
Albany County Courthouse Room 102
Albany New York 12207

Oct. 17, 2011

Index NO. 4127-11

on or about October 13, 2011, I received from the office of the Attorney General what appears to be an answer to my article 78.

My reason for writing to you is to find out how much time is afforded to me to respond to the Attorney General's answer entitled "Verified Answer and Return". I am currently attempting to put together my reply and do not wish to run the risk of passing any deadline. That is why I am asking how much time do I have to respond? And if a extension of time is need who do I seek such extension from.

Thank you for you time and consideration, I await your reply.

Sincerely,
Kenneth Samuels

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

In the Matter of the Application of

KENNETH SAMUELS, #97-A-0331,

Petitioner,

- against -

BRIAN FISCHER, Commissioner of DOC;
ERIC T. SCHNEIDERMAN, Attorney General;

Respondents.

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

OAG No. 11-130726

Respondents, by their attorney, ERIC T. SCHNEIDERMAN, Attorney
General of the State of New York, MARCUS J. MASTRACCO, Assistant
Solicitor General, of counsel, for their verified answer to the petition in the
above-entitled proceeding:

FIRST: Admit paragraphs 1 and 4.

SECOND: Admit paragraph 2 only to the extent that Albany County is
the proper venue for this proceeding.

THIRD: Admit paragraph 3 only to the extent that this is an Article 78
proceeding and deny the remaining allegations except so much of such

FILE

VERIFIED ANSWER
AND RETURN

Index No. 4127-11

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paragraph as is established by the administrative record, to which the Court is respectfully referred.

FOURTH: Admit paragraph 5 to the extent that Brian Fischer is the New York State Commissioner of the Department of Corrections and Community Supervision and respectfully refer the Court to the applicable statutory, regulatory and decisional authority for a complete and accurate description of his duties and responsibilities.

FIFTH: Deny paragraph 6 to the extent that it asserts that Albert Prack is a named respondent in this action and admit that Albert Prack is the Director of the Special Housing Unit, and respectfully refer the Court to the applicable statutory, regulatory and decisional authority for a complete and accurate description of his duties and responsibilities.

SIXTH: Deny paragraph 7 to the extent that it asserts that Attorney General Eric T. Schneiderman is a proper respondent in this action. The Court is respectfully referred to paragraphs EIGHTEENTH, NINETEENTH, TWENTIETH and TWENTY-FIRST of this Answer, "Objection in Point of Law."

SEVENTH: Deny paragraphs 8, 9, 10, 11, 13, 14, 15, 16, 17 18, 20, 21, 32, and its footnote, 38 and 49, except so much of such paragraphs as are established by the administrative record, to which the Court is respectfully referred.

EIGHTH: Deny paragraph 12.

NINTH: Deny paragraph 19 and all of the unnumbered paragraphs thereunder, the unnumbered paragraphs following the heading "Cause of Action" and the unnumbered paragraphs following paragraphs 34 and 47. To the extent these paragraphs seek to characterize case law, statutes or regulations, respondents respectfully refer the Court to the applicable regulatory, statutory and decisional law for a more complete and accurate statement and as the best evidence thereof. As to any legal arguments petitioner makes in such paragraphs, respondents are neither able nor required to respond by admission or denial. As to the relief which petitioner requests in such paragraphs, a responsive pleading is not required.

TENTH: Deny paragraphs 23, 25, 27, 29, 35, 36, 39 and 51 and the unnumbered paragraph thereunder, as seeking to characterize case law, statutes or regulations, and respondents respectfully refer the Court to the applicable regulatory, statutory and decisional law for a more complete and accurate statement and as the best evidence thereof. As to any legal arguments petitioner makes in such paragraphs, respondents are neither able nor required to respond by admission or denial.

ELEVENTH: Deny paragraphs 22, 24, 26, 28, 30, 31, 33, 34, 37, 41, 43, 44, 45, 46, 47, 50 and 52 and the unnumbered paragraph thereunder. To the extent these paragraphs seek to characterize case law, statutes or

regulations, respondents respectfully refer the Court to the applicable regulatory, statutory and decisional law for a more complete and accurate statement and as the best evidence thereof. As to any legal arguments petitioner makes in such paragraphs, respondents are neither able nor required to respond by admission or denial. As to the relief which petitioner requests in such paragraphs, a responsive pleading is not required.

TWELFTH: Deny paragraph 40 and its footnote, paragraphs 42, 48 and 53, except so much of such paragraphs as are established by the administrative record, to which the Court is respectfully referred. To the extent these paragraphs seek to characterize case law, statutes or regulations, respondents respectfully refer the Court to the applicable regulatory, statutory and decisional law for a more complete and accurate statement and as the best evidence thereof. As to any legal arguments petitioner makes in such paragraphs, respondents are neither able nor required to respond by admission or denial.

THIRTEENTH: Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the unnumbered paragraph following paragraph 53.

FOURTEENTH: Deny each and every allegation of the petition except to the extent addressed herein.

STATEMENT OF THE GROUNDS FOR RESPONDENTS' ACTIONS

FIFTEENTH: The grounds for respondents' actions are fully set forth in the determination being challenged and the return annexed hereto.

SIXTEENTH: The determination and return demonstrate that respondents acted in full compliance with the law and in no way acted unconstitutionally, erroneously, improperly, arbitrarily, or capriciously and that respondents' determination is supported by substantial evidence.

SEVENTEENTH: Petitioner has failed to preserve and/or has waived his claims of procedural error by failing to raise his claims administratively.

OBJECTION IN POINT OF LAW

EIGHTEENTH: Petitioner has improperly named Attorney General Eric T. Schneiderman as a respondent in this matter, and therefore Attorney General Eric T. Schneiderman must be dismissed as a respondent prior to transfer of this matter to the Appellate Division.

NINETEENTH: Attorney General Eric T. Schneiderman is merely the attorney for respondent Brian Fischer and had no involvement in and committed no actions relative to the disciplinary actions that are the subject of this proceeding.

TWENTIETH: Indeed, this is reflected in the fact that the petition contains no allegations whatsoever against Attorney General Eric T. Schneiderman.

TWENTY-FIRST: Accordingly, because the petition fails to state a cause of action with regard to Attorney General Eric T. Schneiderman, he must be dismissed from this proceeding prior to transfer of this matter to the Appellate Division.

TRANSFER TO THE APPELLATE DIVISION

TWENTY-SECOND: The determination sought to be reviewed was made as a result of a hearing held at which evidence was taken pursuant to direction by law and the petition raises the issue of whether, on the entire record, the determination is supported by substantial evidence (§ 32).

TWENTH-THIRD: Because respondents have raised no objection in point of law that would terminate the proceeding in this Court, this proceeding must be transferred for disposition to the Appellate Division, Third Department, pursuant to C.P.L.R. 7804(g).

RECORD OF PROCEEDINGS

TWENTY-FOURTH: Respondents certify that the following documents constitute the return herein, the original of which will be filed in the Albany County Clerk's Office:

- A. Misbehavior Report, dated November 16, 2010, by C.O. R. Woody, Jr.;
- B. Misbehavior Report, dated November 16, 2010, by C.O. T. Bellinger;
- C. Assistant Forms (2 pages);
- D. Hearing Record Sheet (2 pages);
- E. Hearing Transcript (59 pages);
- F. Log Book Entries (2 pages);
- G. Witness Interview Notice;
- H. Hearing Disposition Rendered, dated November 23, 2010 (3 pages);
- I. Petitioner's Requests for Extension of Time to File Appeal, together with Reply (2 pages);
- J. Administrative Appeal, dated December 21, 2010 (11 pages);
- K. Supplemental Appeal, dated January 20, 2011 (13 pages);
- L. Administrative Affirmance, dated February 11, 2011;
- M. Unusual Incident Report (redacted) (16 pages);
- N. Use of Force Report (5 pages);
- O. To/From Memoranda (redacted) (4 pages);
- P. Unusual Incident Report (unredacted) for the Court's *in camera* review (Available upon Request);
- Q. To/From Memoranda (unredacted) for the Court's *in camera* review (Available upon Request).

WHEREFORE, respondents request judgment dismissing the petition, or in the alternative, an order pursuant to C.P.L.R. 7804(g) transferring this proceeding to the Appellate Division, Third Department, for initial disposition and that judgment follow confirming the determination and dismissing the petition, and granting such other and further relief as may be proper.

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
Attorney for Respondents
MARCUS J. MASTRACCO
Assistant Solicitor General
of Counsel
The Capitol
Albany, New York 12224
(518) 473-0903

TO: HON. DIANE HOOK
Special Term Clerk
Supreme Court Clerk's Office
Room 102
Albany County Courthouse
16 Eagle Street
Albany, New York 12207

KENNETH SAMUELS
97-A-0331
Upstate Correctional Facility
P.O. Box. 2001
Malone, New York 12953

Exhibit A.

Albany County Clerk
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Sing-Sing Correctional Facility

INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre) Samuel, K		NO. ♦ NÚM. 97A0331	HOUSING LOCATION ♦ CELDA HBB W20
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE HBB W Gallery South		INCIDENT DATE ♦ FECHA 11-16-10	INCIDENT TIME ♦ HORA Approx 7 ²⁸ pm
3. RULE VIOLATION(S) ♦ VIOLACIÓN/ES 100.11 Assault 104.11 Violent Conduct 104.13 Disturbance 106.10 Direct Order 107.10 Interference			
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE On the above date and approximate time I observed inmate Samuel 97A0331 strike officer Bellinger in his right eye. I responded to stop the assault by using a body hold but was unsuccessful. Inmate Samuel took up a fighting stance and struck me 2 times with a closed (left) fist to my left side of facial area. He was given several direct orders to stop resisting which he refused. Fearing for my safety and to prevent further assault I drew my baton and attempted to strike the inmate on his shoulder and back area inadvertently striking his head area approximately 3 times. I used a body hold and forced this inmate to the ground and applied mechanical restraints to this struggling inmate. Area Supervisor notified.			
Served By CORRECTION OFFICER R-L O'NEILL 11/17/10 801/A			
REPORT DATE ♦ FECHA 11-16-10	REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME R. Woody Jr	SIGNATURE ♦ FIRMA R. Woody Jr	TITLE ♦ TÍTULO CO
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay)			
SIGNATURES: FIRMAS		1. _____ 2. _____ 3. _____	

NOTE: Fold back Page 2 on dotted line before completing below.

6. WERE OTHER INMATES INVOLVED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> IF YES, GIVE NAME & #	
7. AT THE TIME OF THIS INCIDENT, WAS INMATE UNDER PRIOR CONFINEMENT/RESTRICTION? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> OR	
AS A RESULT OF THIS INCIDENT, WAS INMATE CONFINED/RESTRICTED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
8. WAS INMATE MOVED TO ANOTHER HOUSING UNIT? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
IF YES, (a) CURRENT HOUSING UNIT HBC 130	(b) AUTHORIZED BY Lt Pinker
9. WAS PHYSICAL FORCE USED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> (IF YES, FILE FORM 2104)	
AREA SUPERVISOR ENDORSEMENT M. Baum	

Exhibit B

05/10

Sing-Sing

Correctional Facility

INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre)	NO. ♦ NÚM.	HOUSING LOCATION ♦ CELDA
Samuels, K	97A0331	HBB W20
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE	INCIDENT DATE ♦ FECHA	INCIDENT TIME ♦ HORA
HBB W Gallery South	11-16-10	Approx. 7 ²⁰ pm
3. RULE VIOLATION(S) ♦ VIOLACIÓN/ES		
100.11 inmate shall not assault staff 104.11 inmate shall not engage in violent conduct 104.13 inmate shall not engage conduct causing disturbance in facility 106.10 disobey direct order 109.10 inmate shall not be out of place 109.12 movement		
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE		
On the above date and approximate time I (Co Bellinger) was standing on HBBG north gallery monitoring the HBB bathhouse area. I observed inmate Samuels, K 97A0331 returning from counselor call out and ordered him to return to his cell. At this time inmate Samuels responded "for what I'm going to the fucking bathhouse now". I then informed the inmate that his gallery wasn't called yet and gave him a second order to look in until his gallery was called. The inmate became irate and stated "fuck you I'm brown and don't talk to me like that. I gave him a direct order to place his hands in his pockets and proceed to his cell. Inmate Samuels stepped on W South and dropped his net bag turned and struck me in the right eye with a left clenched fist. I then attempted to gain control over the inmate by using body holds but was unsuccessful. I gave additional orders to stop resisting and he refused all orders. Responding staff arrived and control was finally gained.		
REPORT DATE ♦ FECHA	REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME	SIGNATURE ♦ FIRMA
11-16-10	T. Bellinger	C. Bellinger
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) ♦ ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay)		
2. Signed By BLORT 2/18 11/17/10 800/A		

NOTE: Fold back Page 2 on dotted line before completing below.

6. WERE OTHER INMATES INVOLVED?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	IF YES, GIVE NAME & #
7. AT THE TIME OF THIS INCIDENT, WAS INMATE UNDER PRIOR CONFINEMENT/RESTRICTION?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	OR
AS A RESULT OF THIS INCIDENT, WAS INMATE CONFINED/RESTRICTED?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
8. WAS INMATE MOVED TO ANOTHER HOUSING UNIT?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
IF YES, (a) CURRENT HOUSING UNIT	HBC 130	(b) AUTHORIZED BY C. Pinker Lt W/C
9. WAS PHYSICAL FORCE USED?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	(IF YES, FILE FORM 2104)
AREA SUPERVISOR ENDORSEMENT M. Baume Sr		

Exhibit C

SAMUELS, Kenneth

INMATE NAME:

DIN # 97A0331

2434C/W2433

CASE #

CELL #: HOSP-INF

ASSISTANCE LIST: ENGLISH

In accordance with the provision of part 251C of Chapter V, you are entitled to select an assistant from a list established by the Facility to assist you in connection with the charges of misbehavior filed against you on 11/16/10 (date). Choose three names from the list below and number them in order of your preference.

- | | | | |
|-----------------|----------------|----------------|---------------|
| () K. Cumiskey | () R. Karison | () D. Mason | () R. Mann |
| () R. Romaine | () T. Sawchuk | () A. O'cana | () H. King |
| () C. Fisher | () B. Ballard | () D. Merriet | () G. Gilleo |

My right to select an assistant has been explained to me and:

() I wish to choose one of the above or

(X) I waive my right to select an assistant

Inmate's Signature: K. Samuels Date: 11/17/10

Officer's Signature: R. Ortiz Date: 11/17/10 Time: 8:00 AM APPROX.

Witness Signature: _____ Date: _____ Time: _____

ASSITANCE LIST: SPANISH

De acuerdo con las provisiones de la parte 251C del Capitulo V, usted tiene el derecho de seleccionar Un asistente de la lista establecida por la Institución para ser asistirlo en el proceso de los cargos de mala conducta presentados contra usted el _____ (fecha). Favor de seleccionar tres nombres de la lista siguiente y enumérelos en el orden de preferencia.

El derecho a seleccionar un asistente me ha sido explicado:

() Yo deseo seleccionar uno de los indicados

() Yo recluso el derecho a seleccionar un asistente

Firma del recluso: _____ Fecha: _____

Firma del Oficial: _____ Fecha: _____ Hora: _____

Firma del Testigo: _____ Fecha: _____ Hora: _____

HRC 130

New York State-Department of Correctional Services
Sing Sing Correctional Facility
ASSISTANT FORM

TO: Sgt White
FROM: DISCIPLINARY OFFICE

You have been selected to assist inmate: Samuels, K #97A0331 in a
pending Tier 3 for a Misbehavior Report dated: 11-16-10

Pursuant to Section 251-4-2 of Chapter V, your role is to ensure that the inmate understands the charges, interview potential witnesses identified by the inmate, and report the results of your efforts to the inmate. You may also be requested to obtain relevant documentary evidence to assist in the preparation of the inmate's defenses to the charges.

TO BE COMPLETED BY ASSISTANT:

I initially met with this inmate on: 11/22/10 at: 12:05 pm
(Date) (Time)

He has requested the following inmates to be interviewed as potential witnesses:

Name	Din#	Location	Agrees to testify
<u>Nji, Njasang</u>	<u>07A0452</u>	<u>HBB-W-1</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<u>Dunn, Troy</u>	<u>89C0322</u>	<u>HBB-W-22</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<u>Coleman, Mark</u>	<u>99A3126</u>	<u>HBB-W-23</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<u>Lopez, Benjamin</u>	<u>07A3564</u>	<u>HBB-W-24</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<u>Johnson, Kevin</u>	<u>96A4700</u>	<u>HBB-W-25</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

* Continued on back of page *

He has requested the following other persons to be interviewed as potential witnesses:

<u>C.O. Bellinger</u>	<u>Sgt. Barnes</u>
<u>C.O. Woody</u>	
<u>C.O. Dustin</u>	
<u>C.O. Gould</u>	

OTHER REQUEST:

ACTION TAKEN:

U.I. Report (copy) - None Available, read preliminary U.I. report to inmate
Copy of log book pages from B-Block - Received
Log Entries in R+W as well as 5 Bldg Gates stating return time - None found *

TO BE COMPLETED AT CONCLUSION OF ASSISTANCE:

I have interviewed witnesses and assisted as requested and reported the results to the inmate charged.

Assistant's Signature: K. White Sgt. Date: 11/22/10 Time: 1:45 pm

Inmate's Signature: K. Samuels Date: 11/22/10 Time: 1:45 pm

Inmate Refused to sign. Witnessed by: _____

Exhibit D.

CASE 10 - 2433 4W 2434

11/17/10 STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
DCP100 HEARING RECORD SHEET - SING SING GENERAL

REVIEW OFFICER LT MCMORROW
REVIEW DATE 11/17/10 TIER 3
C.R. DATE NONE M.F. DATE LIFE

START 11/22/10

CONDUCTED 11/30/10 PAGE 1 OF 2

- 1) NAME SAMUELS, KENNETH DIN. 97A0331 LOCATION HS-D2-E01
2) INCIDENT DATE 11/16/10 INCIDENT TIME 07:20 PM
3) INMATE WAS CONFINED
4) INMATE WAS NOT RELEASED AT REVIEW
5A) SERVING OFFICER CO R.L.ORTIZ SERVING DATE/TIME 11/17/10 08:00 AM
5B) RELEASED FROM PREHEARING CONFINEMENT?
AUTHORIZED PERSON (WAIVED) DATE AUTHORIZED ___/___/___
6) ASSISTANT NAME
7) INTERVIEW DATE ___/___/___ INTERVIEW TIME ___:___ (IF APPLICABLE)
8) EXTENSION NUMBER
9) IF APPLICABLE, CHECK REQUIRED DRUG TESTING FORMS PROVIDED TO INMATE
PURSUANT TO DIRECTIVE 4937 OR 4938
TEST REQUEST FORMS ___ TEST PROCEDURE FORMS ___
TEST RESULT FORMS ___ APPENDIX C ___ OTHER (SPECIFY) ___

- 10) INMATE 13 ENGLISH SPEAKING
A) IF NOT, WERE CHARGES TRANSLATED AND SERVED TO INMATE?
B) INTERPRETOR AT HEARING
11) HEARING BEGIN: DATE 11-21-10 TIME 1:25 PM END: DATE 11/23/10 TIME 4:21 PM
12) CHARGES: SPECIFY INMATE'S PLEA TO THE CHARGES CONSIDERED AT THE HEARING

CHARGE NUMBER	DESCRIPTION OF CHARGES	CO	REPORTED BY	INMATE'S PLEA
104.11	VIOLENT CONDUCT	CO	R.WOODY	Not Guilty
104.13	CREATING A DISTURBANCE	CO	R.WOODY	Not Guilty
100.11	ASSAULT ON STAFF	CO	R.WOODY	Not Guilty
107.10	INTERFERENCE WITH EMPLOYEE	CO	R.WOODY	Not Guilty
106.10	REFUSING DIRECT ORDER	CO	R.WOODY	Not Guilty
104.11	VIOLENT CONDUCT	CO	T.BELLINGER	Not Guilty
104.13	CREATING A DISTURBANCE	CO	T.BELLINGER	Not Guilty
100.11	ASSAULT ON STAFF	CO	T.BELLINGER	Not Guilty

SIGNATURE OF INMATE *[Signature]* (SEE NEXT PAGE FOR ADDITIONAL CHARGES)
DATE 11/21/10 TIME 1:30 PM

- 13) WITNESSES: IF NONE REQUESTED, CHECK HERE
- | A) REQUESTED BY INMATE | TESTIFIED | IN INMATE'S PRESENCE |
|------------------------|-------------|----------------------|
| _____ | Y ___ N ___ | Y ___ N ___ |
| _____ | Y ___ N ___ | Y ___ N ___ |
| _____ | Y ___ N ___ | Y ___ N ___ |
| _____ | Y ___ N ___ | Y ___ N ___ |
| _____ | Y ___ N ___ | Y ___ N ___ |
| _____ | Y ___ N ___ | Y ___ N ___ |
| _____ | Y ___ N ___ | Y ___ N ___ |
| _____ | Y ___ N ___ | Y ___ N ___ |
| _____ | Y ___ N ___ | Y ___ N ___ |
| _____ | Y ___ N ___ | Y ___ N ___ |
- B) REQUESTED BY HEARING OFFICER
- | TESTIFIED | IN INMATE'S PRESENCE |
|-------------|----------------------|
| Y ___ N ___ | Y ___ N ___ |
| Y ___ N ___ | Y ___ N ___ |
| Y ___ N ___ | Y ___ N ___ |
| Y ___ N ___ | Y ___ N ___ |
| Y ___ N ___ | Y ___ N ___ |
| Y ___ N ___ | Y ___ N ___ |
| Y ___ N ___ | Y ___ N ___ |
| Y ___ N ___ | Y ___ N ___ |
| Y ___ N ___ | Y ___ N ___ |
| Y ___ N ___ | Y ___ N ___ |

NOTE IF ANY WITNESS IS DENIED OR IF A REQUESTED WITNESS TESTIFIES OUTSIDE THE PRESENCE OF THE INMATE CHARGED, AND/OR THE INMATE IS NOT PERMITTED TO REVIEW TESTIMONY OF SUCH WITNESS, FORM 2176 EXPLAINING THE REASON FOR THAT DETERMINATION MUST BE GIVEN TO THE INMATE AND INCLUDED AS PART OF THE RECORD.

HEARING OFFICER SIGNATURE: *[Signature]*

CASE 10-2433 C/U 2434

11/17/10
DCP100

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
HEARING RECORD SHEET - SING SING GENERAL

**** (CONTINUED) ****

REVIEW OFFICER LT MCMORROW
REVIEW DATE 11/17/10 TIER 3
C.R. DATE NONE M.E. DATE LIFE

START 11/22/10
CONDUCTED BY

11/30/10

PAGE (2) OF (2)

- 1) NAME SAMUELS, KENNETH DIN 97A0331 LOCATION HS-D2-E01
2) INCIDENT DATE 11/16/10 INCIDENT TIME 07:20 PM
3) INMATE WAS CONFINED
4) INMATE WAS NOT RELEASED AT REVIEW
5A) SERVING OFFICER CO R.L.ORTIZ SERVING DATE/TIME 11/17/10 08:00 AM
5B) RELEASED FROM PREHEARING CONFINEMENT? DATE AUTHORIZED ---
6) ASSISTANT NAME (WAIVED)
7) INTERVIEW DATE --- INTERVIEW TIME ---
8) EXTENSION NUMBER --- (IF APPLICABLE)
9) IF APPLICABLE, CHECK REQUIRED DRUG TESTING FORMS PROVIDED TO INMATE
PURSUANT TO DIRECTIVE 4937 OR 4938
TEST REQUEST FORMS --- TEST PROCEDURE FORMS ---
TEST RESULT FORMS --- APPENDIX C --- OTHER (SPECIFY) ---
10) INMATE IS ENGLISH SPEAKING
A) IF NOT, WERE CHARGES TRANSLATED AND SERVED TO INMATE? ---
B) INTERPRETOR AT HEARING ---
11) HEARING BEGIN: DATE 11/21/10 TIME 1:25 PM END: DATE 11/29/10 TIME 4:21 PM
12) CHARGES: SPECIFY INMATE'S PLEA TO THE CHARGES CONSIDERED AT THE HEARING
INMATE'S PLEA
CHARGE NUMBER DESCRIPTION OF CHARGES CO REPORTED BY
106.10 REFUSING DIRECT ORDER CO T.BELLINGER
109.10 OUT OF PLACE CO T.BELLINGER
109.12 MOVEMENT REGULATION VIOLATION CO T.BELLINGER

SIGNATURE OF INMATE K. Samuels
DATE 11-21-10 TIME 1:30 PM

- 13) WITNESSES: IF NONE REQUESTED, CHECK HERE
- | REQUESTED BY INMATE | TESTIFIED | IN INMATE'S PRESENCE |
|-------------------------------------|-------------------|----------------------|
| <u>CO T. BELLINGER</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |
| <u>CO R. WOOD</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |
| <u>INMATE NJT 07A0452</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |
| <u>DUNN 89 CO 322</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |
| <u>JOHNSON 96A4700</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |
| <u>REQUESTED BY HEARING OFFICER</u> | | |
| <u>CLERMON P 93A2420</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |
| <u>MORRISON F 10A2947</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |
| <u>CO POWLEN</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |
| <u>CO L. GONZA</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |
| <u>NJT 07A0452</u> | <u>Y</u> <u>N</u> | <u>Y</u> <u>N</u> |

NOTE IF ANY WITNESS IS DENIED OR IF A REQUESTED WITNESS TESTIFIES OUTSIDE THE PRESENCE OF THE INMATE CHARGED, AND/OR THE INMATE IS NOT PERMITTED TO REVIEW TESTIMONY OF SUCH WITNESS, FORM 2176 EXPLAINING THE REASON FOR THAT DETERMINATION MUST BE GIVEN TO THE INMATE AND INCLUDED AS PART OF THE RECORD.

HEARING OFFICER SIGNATURE: [Signature]

***SUCCESSFUL PRINT COMPLETION**

Exhibit E

Samuels, Kenneth – 97A0331
Tier 2 Hearing – Tape #10-2433/2434
Hearing date: 11/23/10
Captain R. Brereton – Hearing Officer

Captain Brereton: This is Sing Sing Correctional Facility my name is Captain R. Brereton, Hearing Officer. This tape recording a tier 3 hearing for inmate K. Samuels 97A0331. I'm going to stop recording to test the tape.

Captain Brereton: Today's November 21st 2010 the time is approximately 1:25 p.m. this is Captain R. Brereton, Hearing Officer this tape is recording a Tier 3 hearing for inmate Kenneth Samuels 97 alpha 03331 this hearing is being held in the Disciplinary Office in SHU. In the room with me is:

Officer Perez: Correction Officer R. Perez.

Captain Brereton: Name and number:

Inmate Samuels: Kenneth Samuels, 97A0331.

Captain Brereton: You were served a copy of this ticket back on November 17th approximately 8 pm by Officer R. L. Ortiz, is that correct?

Inmate Samuels: Yes.

Captain Brereton: Also you had assistance and you waived, is that correct?

Inmate Samuels: Yes.

Captain Brereton: No witnesses? That still stands?

Inmate Samuels: No.

Captain Brereton: You don't want no witnesses?

Inmate Samuels: Yeah I want witnesses.

Captain Brereton: So why you waive your right to assistance?

Inmate Samuels: Because, uh at the time when they came they was you know pretty aggressive so I just said I don't want nothing just let me sign the ticket and that's it.

Captain Brereton:

Alright. No problem. Alright misbehavior report written here at Sing Sing Correctional Facility pertaining to one 2433-2434 case 97 alpha 0331 HBB whiskey 20 HBB whiskey gallery South November 16, 2010 approximately 7:20 pm. 100.11 inmate shall not assault staff, 104.11 inmate shall not engage in any violent conduct, 104.13 inmate shall not engage in conduct causing disturbance in the facility, 106.10 disobeying a direct order, 109.10 inmate shall not be out of place, 109.12 movement. On the above date and approximate time I C.O. Bellinger was standing at HBB Q North gallery monitoring HBB bathhouse run. I observed inmate Samuels, K. 97 alpha 0331 returning from the counselors call out and ordered him to return to his cell. At this time inmate Samuels responded, "For what? I'm going to the fucking bathhouse now." I then informed the inmate that he that his gallery wasn't called yet and gave him a second order to lock in until his gallery was called. The inmate became irate and said "Fuck you, I'm grown and don't talk to me." Like that I gave him a direct order to place his hands in his pocket and proceed to his cell. Inmate Samuels stopped on W South dropped his net bag, turned and struck me in the right eye with his left closed clinched fist. I attempted to get control over the inmate by using body holds but unsuccessful. I gave additional orders to stop resisting and he refused the orders. Responded staff arrived and control was finally gained.

Second ticket written, K Samuels 97 alpha 0331 inmate whiskey 20 rule violation 100.11 assault, 104.11 violent conduct, 104.13 disturbance, 106.10 direct order, 107.10 interference. On the above date and approximate time I observed inmate Samuels 97 alpha striking Officer Bellinger in the right eye. I responded to stop the assault by using a body hold but was unsuccessful. Inmate Samuels took up a fighting stance and struck me two times with a closed fist left fist to the left side of facial area. I wa, he was given several direct orders to stop resisting which he refused. Fearing for my safety and to prevent further assault I drew my baton and attempted to strike the inmate on his shoulder and back area inadvertently striking his head area approximately three times. I used a body hold and forced this inmate to the ground and applied mechanical restraints to this struggling inmate. Area Supervisor notified. Report date 11/16/10. R. Woody Jr., signed R. Woody. Same thing Bellinger one, 11/16, T. Bellinger, signed T. Bellinger. At this time I'll ask how you plea the charge then I will record your plea to section 12 on here record sheet. 104.11, violent conduct, this is the one on R. Woody. How do you plead?

Inmate Samuels:

Not guilty.

Captain Brereton:

Speak up.

Inmate Samuels:	Not guilty.
Captain Brereton:	104.13, creating a disturbance?
Inmate Samuels:	Not guilty.
Captain Brereton:	10, 100.11 assault on staff?
Inmate Samuels:	Not guilty.
Captain Brereton:	107.10 interference with an employee?
Inmate Samuels:	Not guilty.
Captain Brereton:	106.10 refusing a direct order?
Inmate Samuels:	Not guilty.
Captain Brereton:	Those are all the charges by Officer Woody. Charges by T. Bellinger, 104.11 violent conduct, how do you plea?
Inmate Samuels:	Not guilty.
Captain Brereton:	104.13, creating a disturbance?
Inmate Samuels:	Not guilty.
Captain Brereton:	100.11, assault on staff?
Inmate Samuels:	Not guilty.
Captain Brereton:	106.10, refusing a direct order?
Inmate Samuels:	Not guilty.
Captain Brereton:	109.10, out of place?
Inmate Samuels:	Not guilty.
Captain Brereton:	109.12, movement regulation?
Inmate Samuels:	Not guilty.

Captain Brereton: Alright. You plead not guilty to all charges. Is that correct?

Inmate Samuels: Yes.

Captain Brereton: You have a pen? Alright just sign section 12, the hearing record sheet. There's two of them.

Officer Perez: Stand up.

Captain Brereton: Stand up.

Officer Perez: Put your signature right here by the X.

Captain Brereton: Let the record reflect the inmate has signed chapter 12, the hearing record sheet. Both of them. [unintelligible].

Inmate Samuels: Sit down?

C.O. Perez: Sit down.

Captain Brereton: Alright, and what witnesses you would like to call?

Inmate Samuels: I would like to call umm, the inmates who who returned with me from the counselor call out.

Captain Brereton: Who are they?

Inmate Samuels: I don't know they names. I know, I know one of them locks on my gallery.

Captain Brereton: What do you mean you don't know their names and expect somebody to call them? Huh?

Inmate Samuels: No they should be on the um...

Captain Brereton: They should be in the....

Inmate Samuels: on the out-count.

Captain Brereton: In a per, in a perfect world yeah. You're calling witnesses...ah...that's why we give assistance. You refused and waived assistance.

Inmate Samuels: Well I had to because...

Captain Brereton: No you did, you didn't had to. They expedite the process. They ask you, ask you, they came to you and asked you if you want assistance and you just said to me on the, on the record that you frustrated you said no you don't want nothing.

Inmate Samuels: I wasn't frustrated. I said they came at me in an aggressive manner. So I..

Captain Brereton: How did they come at you in an aggressive manner you were in the box right? When they came to you right?

Inmate Samuels: No I was upstairs in the hospital.

Captain Brereton: Alright so Officer Ortiz, who was serving you...

Inmate Samuels: Not Ortiz it was uh, the the the Sergeant or Lieutenant that was with him.

Captain Brereton: You got ah 97 number, how he come at you aggressive?

Inmate Samuels: Huh?

Captain Brereton: This isn't your first Tier 3 hearing correct?

Inmate Samuels: No it's not.

Captain Brereton: So, but you said you don't want nothing.

Inmate Samuels: Yeah, cause everybody talking bout if you don't do this way that way you gonna get your ass beat this and that so I just, I don't want nothing let me just sign it and that's it.

Captain Brereton: And now who's going to find you, who's going to find you witnesses?

Inmate Samuels: I need assistance.

Captain Brereton: No, who is the witness? You know what I mean? That's why we put a hold on stuff who had called for them. I don't have, they keep a record of who I call on that day. You see what I'm saying?

Inmate Samuels: Well umm...

Captain Brereton: And nothing can guarantee we got these these folks [unintelligible] call outs.

Inmate Samuels: Well I'm telling you that one of them locks on my gallery, he was there. One cell.

Captain Brereton: You lock in, you, no your gallery right now is SHU.

Inmate Samuels: Alright, he locks on W gallery B-block in one cell.

Captain Brereton: Alright, so why I get, or why would the officer [unintelligible] these charges on you?

Inmate Samuels: I don't know but I know when I came back from the umm, counselor call out....

Captain Brereton: mmm hmm...

Inmate Samuels: I picked up my bag which was at the front of the door in B-block inside of another bag with a bunch of other dudes bags, picked up my bag and got on line. I was waiting for them to call the bathhouse. Umm, I'm the big, the big officer walked by, I asked him umm what time you think they were gonna close for the bathhouse, he said they were running umm, uh movies. So I asked him alright can I go back to my cell I don't wanna go to the bathhouse. He said no you put down for the bathhouse you gotta go to the bathhouse. So I'm waiting, I'm waiting and then um the block officer called bathhouse going out if you have any cigarettes return your cigarettes to your cell, so I went to the back of the gallery and told the officer yo he just made an announcement I got cigarettes to return them back to your cell. So that's what I went and did took the cigarettes back to my cell came back up the gallery, the officer that was on umm the the mess-hall landing, he told the officer downstairs there's a inmate coming up from R gallery find out where wheres he going. He told the officer upstairs that I just sent him back to take cigarettes back on whiskey gallery. He said I didn't call whiskey gallery send him back. So the officer told me to go back so I told him I don't even wanna go to the bathhouse. I wanna go lock in. Uh Woody said you should have never put down for bathhouse anyway I said mind your fucking business nobody talking to you and that's when all this shit happened.

Captain Brereton: So you're saying it didn't start with Bellinger it started with Woody?

Inmate Samuels: Huh?

Captain Brereton: So you're saying it wasn't started with Bellinger it started with Woody?

Inmate Samuels: That's the only person I I said something to like that.

Captain Brereton: Alright so so how Bellinger get punched in his eye?

Inmate Samuels: They was beating me up.

Captain Brereton: And?

Inmate Samuels: And I I had I was trying to get away I couldn't get away cause um Woody had me by my um my shirt so I tried ev which ever way I could to get away from him. I couldn't get away from him.

Captain Brereton: Understandable. So what else you did cause he don't just get punched in his eye by himself.

Inmate Samuels: Well we fighting.

Captain Brereton: And you were sw you were swing away, swinging blows?

Inmate Samuels: Absolutely.

Captain Brereton: Alright so then tell the story like it is. So you were swinging blows and he got hit in the eye?

Inmate Samuels: I don't know if he got hit in the eye or where he got hit at but I know I was trying to get away, they was fucking me up and the only way I could try and get loose is to swing.

Captain Brereton: Alright and what these witness, what these inmate witnesses going to testify to?

Inmate Samuels: That I wasn't the one to initiate any of this. I didn't initiate any of the uh all that I took a stance and and punched him the eye and all that stuff. None of that never happened. And another witness I want to call is the Sergeant. I don't know his name, I know he's tall he was in the block that night. I wanna call him I wanna call.....

Captain Brereton: Black or white?

Inmate Samuels: Black guy. I wanna call um twenty, twenty six, I wanna call the cell from the double bunk all the way to twenty two cell. I wanna call all those guys right there.

Captain Brereton: And what they going to testify to?

Inmate Samuels: That I was....i didn't took no stance with none of these officers or anything like that.

Captain Brereton: You saying this was unprovoked?

Inmate Samuels: Absolutely.

Captain Brereton: Alright. [unintelligible] double bunk on what on the flats.

Inmate Samuels: No from the double bunk on whiskey company.

Captain Brereton: Where did you say [unintelligible] happen?

Inmate Samuels: um from whiskey 20 on down to the double bunk. From my cell, my old cell all the way down to [unintelligible].

Captain Brereton: You have a whiskey 20, all the way down to where?

Inmate Samuels: From whiskey 22 all the way down to the double bunk cell, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 3..no.

Captain Brereton: Anything else?

Inmate Samuels: I wanna call the the the authors of the report and um I'm trying to find out the other officer's name that was uh, that was involved with this. All I know is he got like crooked eyes. I don't know his name.

Captain Brereton: What other officers were involved in this?

Inmate Samuels: It was three officers.

Captain Brereton: You got to come up with a description cause uh I'm not running around here.....(interrupted by inmate Samuels)

Inmate Samuels: I know ummm....he got a bald head, bald head crooked eyes uh, he works B block on a regular. I just don't know his name. He was at at that night he was on the mess-hall landing.

Captain Brereton: Alright [unintelligible] the time is 1:40 p.m. I will stop this hearing. This hearing is adjourned.

(TAPE STOPPED)

Captain Brereton: The date is November the 21st 2010. (ringing in the background-inaudible) in the room with me is:

C.O. Ortiz: Correction Officer Raymond Luis Ortiz, badge number (ringing in the background – inaudible)

Captain Brereton: Name and number:

Inmate Samuels: Kenneth Samuels, 97 (inaudible – phone ringing in the background)

(person answers phone)

Captain Brereton: This is Captain Brereton who am I talking to?

C.O. Bellinger: This is Officer Bellinger sir.

Captain Brereton: Alright you're on tape right now Bellinger so you were called here to witness an incident that took place when you was ah viciously assaulted back on November what date was that?

C.O. Bellinger: That's number 16 approximately 7:20 p.m.

Captain Brereton: Thank you for the clarification. Alright Mr. Samuels any question you have for the witness you direct your questions to me if I think the question is irrelevant I will ask the witness you will not speak to the witness directly do you understand?

Inmate Samuels: Yes.

Captain Brereton: Alright what question would you like to ask Officer Bellinger?

Inmate Samuels: Um I would like to ask Officer Bellinger um this date and time was um how many officers along with him es, escorted me down the gallery?

Captain Brereton: This is after the incident or before?

Inmate Samuels: Before the incident.

Captain Brereton: So why would they escort you down the gallery?

Inmate Samuels: Because that's what he says in the ticket he said he asked me to put my hands in my pocket. And umm umm...

Captain Brereton: Officer Bellinger?

C.O. Bellinger: Yes sir.

Captain Brereton: Do you recall on the date of the incident when the report said you had the inmate escorted down the gallery you told him to put his hands in his pocket, do you recall who was the other officer was with you?

C.O. Bellinger: umm, no sir only when the response came sir.

Captain Brereton: Alright. Next question?

Inmate Samuels: so umm, I wanted to know so it was there any other officer with him at that time?

Captain Brereton: He just said no only when the response came.

Inmate Samuels: Oh alright so then his, there was no officers with him at all. He was by himself escorting me by himself then?

Captain Brereton: What part of the English language you didn't understand just now?

Inmate Samuels: He said there were no officers uh....

Captain Brereton: He said the response crew came. After he was struck.

Inmate Samuels: Alright, okay okay okay thank you that's umm in the in the and the reporter says he spoke to me on the flats coming back from the um, from the bathhouse. And told me to go lock in.

Captain Brereton: On the above date approximate time I observed inmate standing, that's Woody's ticket. On the above date and approximate time I C.O. Bellinger standing at B-Q-North gallery monitoring the HBB bathhouse run observed inmate Samuels 97 dadadah return from Counselors call out I ordered him to return to his cell at this time Samuels responded "for what I'm going to the fucking bathhouse now". I then informed the inmate that his galley was wasn't called yet and gave him a second direct order to lock in until his gallery was called. The inmate became irate and stated "fuck you I'm grown and don't talk to me like that." I gave him a direct order to place his hands in his pocket and

proceed to his cell. Inmate Samuels stopped on W South and dropped his net bag, turned and struck me in the right eye with a left clenched fist. I then attempted to ah gain control over the inmate by using body holds but was unsuccessful. I gave additional orders to stop resisting, he refused all orders. Responding staff arrived and control was finally gained. Nowhere in this ticket I hear anything about you were on the flats. Where do you see that in yours? Do you have a different ticket than I got?

Inmate Samuels: No right here it says on the above date and time I C.O. Bellinger was standing um on um HBB-Q gallery North monitoring the bathhouse....

Captain Brereton: Right.

Inmate Samuels: observed inmate Samuels 97A returning from the Counselor call outs.

Captain Brereton: Alright.

Inmate Samuels: I was on the flats.

Captain Brereton: Alright, so what's the problem?

Inmate Samuels: The problem is right there he says he he he observed me coming from counselor call out and he told me to return to my cell.

Captain Brereton: You have questions [unintelligible].

Inmate Samuels: Yeah I'm I'm giving [unintelligible] the question is uh uh on the flats were there inmates waiting for the bathhouse run?

Captain Brereton: Officer Bellinger?

C.O. Bellinger: Yes sir.

Captain Brereton: On the day in question do you recall if the bathhouse was waiting on the flats?

C.O. Bellinger: Yes the bathhouse was on the flats at that time sir. Yes sir.

Captain Brereton: Next question.

Inmate Samuels: Umm, well at this time I don't have any further questions with regarding, regarding this witness until ummm, until my other witnesses testify.

Captain Brereton: Repeat that.

Inmate Samuels: I don't have any further questions at this time.....

Captain Brereton: No [unintelligible] re cross examine and all that stuff we will ask all we got now.

Inmate Samuels: But....

Captain Brereton: We will all ask what we got now. This isn't [unintelligible] defense that we can recall to recall. Got that? [unintelligible]. All questions asked now the witness is present.

Inmate Samuels: Umm, oh alright when when,
did he escort me down the gallery?

Captain Brereton: The report said can I re repeat it? Return to his cell dadada and inform the inmate that that his gallery was not called I gave him a direct order to put his hands in his pocket and proceed to his cell. Inmate Samuels stopped on W South and dropped his net bag turned and struck me in the right eye with a left closed fist that means he was escorting you down W South.

Inmate Samuels: Okay.

Captain Brereton: It is right in the report. What is the question?

Inmate Samuels: Okay now based on the fact that he was escorting me what what was he escorting me for? To lock in?

Captain Brereton: That's what he said.

Inmate Samuels: Alright, did he did stop to get the keys from officer the gallery officer to lock me in my cell?

Captain Brereton: Officer Bellinger do you recall when you escorting this inmate did you stop and ask the officer for the key or did you tell the officer unlock the cell? Do you recall?

Inmate Samuels: Uh no sir all I recall is passing by the office and there was a gallery officer already in there and they know when there is an inmate being escorted to automatically come out they office and umm to assist and see what's going on.

Captain Brereton: Next question.

Inmate Samuels: Alright then then if is if that was the case his report is not endorsed by any other officer.

Captain Brereton: So what does that mean?

Inmate Samuels: Based upon the testimony he just said.

Captain Brereton: No he said automatically come out.

Inmate Samuels: Alright.

Captain Brereton: Alright?

Inmate Samuels: [unintelligible]

Captain Brereton: But ah excuse me what endorsing have to do with this?

Inmate Samuels: Huh?

Captain Brereton: Ask questions.

Inmate Samuels: Okay okay I don't have anymore questions for this officer. I don't have anymore.

Captain Brereton: Officer Bellinger?

C.O. Bellinger: Yes sir?

Captain Brereton: Did you receive any stitches in your eye or any sutures?

C.O. Bellinger: I I received uh is ah what they call like ah [unintelligible] so right now until I get [unintelligible] they will decide what will be needed for my eye after that so...

Captain Brereton: So you have to go see an eye specialist?

C.O. Bellinger: No no sir I will be seeing him tomorrow sir and then I will know what else needs to be done to the eye.

Captain Brereton: Alright you have anymore you still having headaches?

C.O. Bellinger: Yes sir.

Captain Brereton: And your positive that inmate Samuels is the inmate that struck you?

C.O. Bellinger: That was his ah clenched fist that hit me sir in my eye.

Captain Brereton: Did you provoke this inmate in any way? Because he's saying that ah he was defending himself.

C.O. Bellinger: At no time did I provoke this inmate I always act professional sir.

Captain Brereton: Alright thank you Officer Bellinger.

Inmate Samuels: One more question.

Captain Brereton: Didn't you just say defense rests? Excuse me after you ask yours then I ask mine. I did, you understand?

Inmate Samuels: Alright.

Captain Brereton: Good, so I hope you feel better and ah wish you a speedy recovery enjoy your holidays.

C.O. Bellinger: Ah you too sir thank you sir.

Captain Brereton: Thank you. His witness is ready?

C.O. Ortiz: Stand by sir.

(Background noise-Officer Ortiz [unintelligible])

Captain Brereton: Lets roll. All of you.

(Background noise- [unintelligible])

Captain Brereton: My man step in the room and cut all the chatter my tape is on. I aint got time [unintelligible]. Step in her man. State your name for the record.

Inmate Dunn: Troy Dunn, 89C0322.

Captain Brereton: Where do you lock?

Inmate Dunn: I lock in whiskey 22 cell.

Captain Brereton: Alright. On November the ah the 6th between the hours of ah 5 pm and 7:20 pm where were you located?

Inmate Dunn: I was in the yard.

Captain Brereton: Do you recall the incident that took place on the gallery?

Inmate Dunn: Yes I heard about the whole thing.

Captain Brereton: You heard about it?

Inmate Dunn: Yes sir.

Captain Brereton: Were you in your cell at that time?

Inmate Dunn: No.

Captain Brereton: Did you witness anything?

Inmate Dunn: No. But I explained to you I heard about the whole thing.

Captain Brereton: uh uh we don't do hearsay in here. We ask you did you witness...

Inmate Dunn: Okay okay no sir.

Captain Brereton: Did you hear anything from where you were standing in the yard? Did you hear anything?

Inmate Dunn: Like I said....

Captain Brereton: No I don't want to hear, I'm talking. Did you hear the fight or did you hear other people talking ?

Inmate Dunn: No it's jail man.

Captain Brereton: Alright.

Inmate Dunn: [unintelligible] hear things.

Captain Brereton: Do you have any questions for your witness?

Inmate Samuels: Um, well based upon that he didn't witness anything. I just like to know what did he hear?

Captain Brereton: No. We don't do hearsay in here. He wasn't in his cell he wasn't in the gallery, he was in the yard.

Inmate Samuels: Okay I got one question then, when you returned from the yard ah...

Captain Brereton: [unintelligible] me.

Inmate Samuels: Alright when he I want you to ask him whether or not when he returned from the yard, did he see anything on the gallery ah ah...

Captain Brereton: No first of all what time did you return to the gallery that night?

Inmate Dunn: I don't know exactly what time but I know....

Captain Brereton: On the early go back or final go back?

Inmate Dunn: No the final go back.

Captain Brereton: So which is after 9:30....[unintelligible]

Inmate Dunn: [unintelligible]

Captain Brereton: Alright.

Inmate Samuels: Well my question is did he observe anything on the gallery?

Captain Brereton: Anything like what?

Inmate Samuels: Anything on the gallery.

Captain Brereton: This starting at what 7:20 pm he came back almost 10 o'clock.

Inmate Samuels: So you 're saying everything was cleaned up by that time?

Captain Brereton: Nothing he had to say [unintelligible] not relevant to this case right now. Another question.

Inmate Samuels: I don't have anymore questions.

Captain Brereton: Thank you there young man. Have a nice day. State your name for the record loud and clear.

Inmate Johnson: Kevil Johnson, 96A4700.

Captain Brereton: Who? Kevin Johnson?

Inmate Johnson: Kevil.

Captain Brereton: Oh, Kevil.

Inmate Johnson: Yes.

Captain Brereton: Like anvil?

Inmate Johnson: well if you want to put it like that.

Captain Brereton: During the hours of ah 5 pm and 7:20 pm on ah November 16th ah do you recall what you had what you did?

Inmate Johnson: I was...

Captain Brereton: Yard, gym, gallery what?

Inmate Johnson: What time was that?

Captain Brereton: Between 5 pm and 7:20 pm.

Inmate Johnson: I was in the yard.

Captain Brereton: Were you on the gallery anytime when this commotion took place? With this inmate here?

Inmate Johnson: No I was in the yard, was in the yard.

Captain Brereton: You were in the yard.

Inmate Johnson: I was in the yard.

Captain Brereton: Alright. And do you recall what time you came back from the yard?

Inmate Johnson: I came back at the end of the yard.

Captain Brereton: At the end of the yard which is probably 9:35, 9:45 approximately?

Inmate Johnson: Approximately.

Captain Brereton: Alright. So anything that you know about this incident is all from a third party?

Inmate Johnson: Yeah I did.

Captain Brereton: From a third party?

Inmate Johnson: I did [unintelligible]

Captain Brereton: Alright so you didn't see nothing or hear nothing first hand? Correct?

Inmate Johnson: [unintelligible]

Captain Brereton: Do you have any questions for the witness?

Inmate Samuels: No I don't.

Captain Brereton: Thank you [unintelligible] Kevil. State your name for the record:

Inmate Nji: Njasang Nji.

Captain Brereton: How do you spell that? NJI?

Inmate Nji: Yes.

Captain Brereton: What's your number?

Inmate Nji: 07A0452.

Captain Brereton: And where do you lock?

Inmate Nji: W one B W one.

Captain Brereton: Alright, August not August. November 16th 2010 there was ah an alleged assault that took place on whiskey gallery. So between the hours of 5 pm and 7:20 pm what were you doing that afternoon?

Inmate Nji: I was with him.

Captain Brereton: With him where?

Inmate Nji: When we first came down here to see our counselors our respective Counselors then we went back to the block I went upstairs to the gallery to get my stuff for gym, shot the breeze for a little while, on my way back I saw him waiting on the bathhouse line and he was coming back, I didn't know for what reason he was coming back up the stairs umm [unintelligible] down he's coming up as I go around but he's being....

Captain Brereton: Escorted?

Inmate Nji: Right.

Captain Brereton: Who was the officer with him?

Inmate Nji: I believe Woody was one, Woody maybe Bill, Bell....

Captain Brereton: So Woody was escorting or Woody was on the ahh on the ahh on the bridge?.....[interrupted by inmate Nji]

Inmate Nji: I saw Woody on the flats walking, I saw Woody on the flats wa, walking, I don't I don't know where Woody was but he was...

Captain Brereton: In the vicinity?

Inmate Nji: Right he was in the vicinity.

Captain Brereton: Well do you remember if it was Bellinger that was escorting him?

Inmate Nji: B, Bellinger and Downtin I believe, I'm not I'm not completely certain. Bellinger and Downtin I believe.

Captain Brereton: Alright.

Inmate Nji: [unintelligible]

Captain Brereton: Not a problem. And um, so at what time did you leave for your run after you saw him going up you went straight downstairs on the flats?

Inmate Nji: mm, I didn't go straight downstairs, I came when I came back from the when we came counselor call outs, he took his shower gear and went waited on the line

for the shower. I went upstairs to W gallery and got my stuff for gym but I didn't go down the gym immediately I shot I was shooting the breeze for like ten fifteen minutes on the gallery and then I came and as I was going down to gym he was being escorted up and then I went around to the backside and as I was going around that's when the incident happened.

Captain Brereton: Alright who was the gallery officer that afternoon?

Inmate Nji: Ms., Mrs. Gould, Ms. Gould.

Captain Brereton: Ms. Gould, C.O. Gould.

Inmate Nji: Yes sir.

Captain Brereton: Alright any questions you got for your witness?

Inmate Samuels: Yeah um when we came back from the from the well you just testified that when we came back from counselor call outs.

Captain Brereton: If you talk to the witness one more time the witness will say goodbye.

Inmate Samuels: Alright, umm I want to know when we came back from the counselor call out I want you to ask him...

Captain Brereton: mm hmm

Inmate Samuels: After he seen me standing on the line did he uh observe Officer Bellinger say anything to me?

Captain Brereton: Mr. Nji?

Inmate Nji: Yes?

Captain Brereton: Do you recall or heard any conversation between this inmate and Officer Bellinger or any other officer for that matter?

Inmate Nji: No sir.

Inmate Samuels: Umm, I would like to ask him on his way to the gym since he was on at that time he had to be on Q or no Q...

Captain Brereton: No he said he was coming down the steps.

Inmate Samuels: Yeah but at if he's coming down I'm assuming he's on his way to the gym.

Captain Brereton: Ah lets breakdown assume.

Inmate Samuels: Alright.

Captain Brereton: A-s-s-u-m-e.

Inmate Samuels: Okay on this day I want you to ask him whether or not when he came down the stairs was he on his way to the gym?

Captain Brereton: No first lets establish where he was, you know what I'm saying? You came down the steps did you come down the Q side or the V side after you came down the steps?

Inmate Nji: I'm in the middle when I come down the steps...

Captain Brereton: Right.

Inmate Nji: Going, I'm going towards the V side the backside...

Captain Brereton: To go to the gym?

Inmate Nji: Yes.

Captain Brereton: [unintelligible].

Inmate Samuels: Alright I want to know on his way to the gym did he observe anything...

Captain Brereton: Hold on, hold on, V is on the backside?

Inmate Nji: Yes sir.

Captain Brereton: W is located where?

Inmate Nji: On the backside.

Captain Brereton: Alright, while proceeding to the gym did you notice or did you hear the commotion going on, on W gallery?

Inmate Nji: Yes sir.

Captain Brereton: Alright, next question.

Inmate Samuels: Uh I want to know what did he observe?

Captain Brereton: Do you recall, hold on man, one question at a time here. Do you recall what transpired up on the gallery? What you saw?

Inmate Nji: I recall uh, uh alt, physical altercation between the prisoner and ah the officers in question. I didn't see the whole thing, because at, I saw part of it I'm going to the gym and officers start....

Captain Brereton: from the other side?

Inmate Nji: Right.

Captain Brereton: So you start running for your for your safety too?

Inmate Nji: Yeah of course.

Captain Brereton: Alright.

Inmate Nji: But nnnow mind you I'm walking but they're walking as well so I sa you know I saw a little bit.

Captain Brereton: Alright do you recall who the two officers coming out from the [unintelligible] who was the first officer on the scene?

Inmate Nji: It's kinda, it's kinda dark back there but I can see he was being escorted by maybe two or three officers two or three officers and I'm....

Captain Brereton: [unintelligible]

Inmate Nji: I assume once again no disrespect sir....

Captain Brereton: so that that was going on through the ah struggle all the time?

Inmate Nji: yes.

Captain Brereton: Alright.

Inmate Nji: yes.

Captain Brereton: did you see anybody use a baton or anything?

Inmate Nji: oh there were sticks, the sticks were out.

Captain Brereton: Okay. Any other questions?

Inmate Samuels: Well he he's not really [unintelligible] he just saying that it was kinda dark and what I want to know is alright I need you to ask him uh what did he hear, what did he hear?

Captain Brereton: Now first of all...

Inmate Samuels: uh huh?

Captain Brereton: You got to establish if he hear anything.

Inmate Samuels: Alright.

Captain Brereton: Did you hear any of the conversation going on? Any screaming, any hollering stop put your hands in your pocket? Badda boom anything you hear sticks in the grounds sticks in the skull? What?

Inmate Nji: I heard an altercation. I heard the inmate the saying I'm I'm I'm on the ground on the ground that's and then of course I heard this statement other than that it was one of those things that's (sound of snapping fingers).

Captain Brereton: Bang bang bang.

Inmate Nji: Right.

Captain Brereton: You know

Inmate Nji: But I did observe ah....

Captain Brereton: any other questions?

Inmate Samuels: Well he's not finished testifying he said he did observe and you saying....

Captain Brereton: excuse me?

Inmate Samuels: Any other questions.

Captain Brereton: Have [unintelligible].....(interrupted by inmate Samuels)...

Inmate Samuels: you're cutting him off when he making a statement...

Captain Brereton: excuse me, excuse me he said you were on the ground and he [unintelligible].

Inmate Samuels: yeah but you cutting him off

Captain Brereton: excuse me

Inmate Samuels: when he was making a statement.

Captain Brereton: he had nothing to say.

Inmate Samuels: [unintelligible]

Captain Brereton: excuse me.

Inmate Samuels: God.

Captain Brereton: Don't call God's name in vein here man.

Inmate Samuels: oh alright.

Captain Brereton: huh don't call God's name in vein.

Inmate Samuels: I'm sorry about that but...

Captain Brereton: did you observe anything after he was on the ground and the sticks were swinging?

Inmate Nji: I observed him being hit.

Captain Brereton: Do you recall who the officer was?

Inmate Nji: I recall that the officers who escorted him up the stairs were uh uh uh Dillinger and Downtin. I don't recall who

Captain Brereton: who?

Inmate Nji: actually hit him but I recall I wi once again logically assumed that the ones who escorted him were the ones who were hitting him but uh other than that like I said many officers were running and telling the prisoners that you know and also one thing that they were telling the prisoners to um, they had locked a prisoner in the slop sink I don't know who he is and they were telling prisoners to back away from the cells and [unintelligible] and that's really all I recall.

Captain Brereton: Any other questions?

Inmate Samuels: No I don't have anymore questions.

Captain Brereton: Thank you there Nji.

Inmate Nji: Yes sir.

Captain Brereton: Alright?

Inmate Nji: Yes sir.

Captain Brereton: Anything else?

Inmate Samuels: yeah my um my assistance (number being dialed in background) [unintelligible] that there was uh there's two other witnesses to testified [unintelligible]

Captain Brereton: You start laying on your assistance already?

Inmate Samuels: No it's been down on there.

Captain Brereton: You signed it right?

Inmate Samuels: Yeah it's been [unintelligible]

Captain Brereton: [unintelligible]

C.O. Ortiz: You got a total of five witnesses, three agreed to testify and two refused inmate Coleman refused to testify 99A3126, inmate Lopez whiskey 24 07A3564, he ah refused to testify.

Inmate Samuels: no he had another paper written, written on the back of the paper of all the people he talked to.

(phone ringing- person answers -[unintelligible])

Captain Brereton: ah this is Captain Brereton from Sing Sing Correctional Facility, who am I talking to?

C.O. Woody: Officer R. Woody, Jr.

Captain Brereton: Alright in the room with me is ahh inmate Samuels and Officer Ortiz, alright?

C.O. Woody: Okay.

Captain Brereton: Any questions you like me to ask the witness while I have him on the phone?

Inmate Samuels: Yeah um on this day and time, uh while while uh uh Officer Dillinger?

Captain Brereton: BELLINGER!

Inmate Samuels: No there's another officer the officer that was on uh uh the mess-hall landing. I wanna I wanna ask him um do we know what officer was it that was on the messhall landing?

Captain Brereton: Officer Woody?

C.O. Woody: Yes?

Captain Brereton: Do you recall who was the officer who was on messhall bridge on the afternoon in question November 16th approximately 7:20 pm.

C.O. Woody: Officer ah I think it was Downtin.

Captain Brereton: You think or you're sure?

C.O. Woody: I'm not sure.

Captain Brereton: Next question.

Inmate Samuels: alright, uh in this in during this incident uh along with yourself...

Captain Brereton: excuse, don't talk to my witness. Talk to me.

Inmate Samuels: during this incident along with himself uh what other officers was with him escorting me down the gallery?

Captain Brereton: We established here Bellinger was the officer escorting you down the gallery. First of all, Officer Woody?

C.O. Woody: Yes?

Captain Brereton: Do you recall escorting this inmate down the gallery before the incident took place?

C.O. Woody: Yes sir.

Captain Brereton: Were you escorting him or Officer Bellinger?

C.O. Woody: Officer Bellinger was escorting him.

Captain Brereton: And where were you located?

C.O. Woody: I was following Officer Bellinger.

Captain Brereton: Alright.

C.O. Woody: I was a few cells behind him.

Captain Brereton: alright.

Inmate Samuels: was there, I would like to ask him was there was there uh another officer behind him?

Captain Brereton: Officer Woody, do you recall if somebody else was following you?

C.O. Woody: No sir.

Captain Brereton: Next question.

Inmate Samuels: Alright, um he said he observed, observed alright I want to ask him whether or not in his ticket he says he observed me uh strike Officer Bellinger in his right eye. Uh with where, where on the gallery did he observe me do that? At what point on the gallery where where wh wh wh wh where was we at on that....

Captain Brereton: on the gallery.

Inmate Samuels: Yeah but its its in front of this cell, in front of that cell from the where on the gallery?

Captain Brereton: What's the relevance here?

Inmate Samuels: yes it is relevant because....

Captain Brereton: no you don't tell me what I asked you where's the relevance here.

Inmate Samuels: I'm telling you.

Captain Brereton: no no excuse me I said where's the relevance here.

Inmate Samuels: because in officer in Officer um Bellinger's ticket, he says um uh....

Captain Brereton: location of incident W gallery south.

Inmate Samuels: Yeah.

Captain Brereton: It didn't say in front of South.

Inmate Samuels: Stopped on W gallery South...

Captain Brereton: mmm hmmm

Inmate Samuels: dropped his net bag, turned and struck me in the right eye. Where at on W? Right there on um between R and W? Right there?

Captain Brereton: It is not in the ticket.

Inmate Samuels: That's why I'm asking him.

Captain Brereton: Like I said weren't you there? Weren't you there? You were the one who was fighting right? Next question.

Inmate Samuels: alright um when he approached when when him and Officer Dillinger, and Bellinger whatever the other officer name. There was three officers who approached me on the gallery uh...

Captain Brereton: after you assaulted the officer or before?

Inmate Samuels: I didn't assault anybody. Uh officers approached me alone with with Officer Woody on the gallery. When he approached me what did they do?

Captain Brereton: You just said you didn't assault nobody, like I said, fine line before you assaulted the officer or afterwards? Establish what we talking about.

Inmate Samuels: when they were escorting me down the gallery I stopped in front of my cell I would like to know what did he do?

Captain Brereton: What did who do?

Inmate Samuels: Officer Woody?

Captain Brereton: he said he was three cells behind. Officer Woody?

C.O. Woody: Yes?

Captain Brereton: D
o you recall what happened that made this inmate stop in front of his cell?

C.O. Woody: I don't know what cell he stopped but he dropped his net bag and turned around and assaulted Officer Bellinger.

Captain Brereton: Next question.

Inmate Samuels: So um after I allegedly assaulted Officer Bellinger, um what did you do?

Captain Brereton: Why are talking to the witness?

Inmate Samuels: Alright um I.

Captain Brereton: It's Captain Brereton can you ask the witness what he did....

Inmate Samuels: alright...

Captain Brereton: after he allegedly said that he stuck the officer in his eye.

Inmate Samuels: Alright Captain uhh....

Captain Brereton: Brereton, you got a ninety seven number this is not the first in here.

Inmate Samuels: I don't do this hearing thing.

Captain Brereton: excuse me, I already explained the rules to you before.

Inmate Samuels: I understand, I understand, I understand.

Captain Brereton: This is not the first witness. Officer Woody?

C.O. Woody: Yes?

Captain Brereton: Do you recall what you did after this inmate allegedly struck Mr. Bellinger in his left eye, his left, his left eye right? His left or right eye which ever one it was, do you recall what you did?

C.O. Woody: Yes sir, I responded by trying to use a body hold which didn't work. After I tried to use a body hold inmate Samuels took up a [unintelligible] he struck me twice and then I cleared my [unintelligible] and then I took out my baton.

Captain Brereton: Alright, next question.

Inmate Samuels: Alright, um after you struck me the first time with the baton....

Captain Brereton: Excuse me?

Inmate Samuels: Alright, alright uh Captain Brereton...

Captain Brereton: How old are you?

Inmate Samuels: I'm thirty five.

Captain Brereton: You suffering from Alzheimer's disease already?

Inmate Samuels: I'll state to you [unintelligible]

Captain Brereton: you'll think before you speak.....Captain Brereton.

Inmate Samuels: Captain Brereton. I would like you to ask the witness after he struck me with the baton and I was on the floor what did he do?

Captain Brereton: Officer Woody do you recall after you strike the inmate and allegedly on the floor, what else transpired?

C.O. Woody: at first that inmate did not go to the floor. He kept fighting us and was given direction to stop fighting and stop resisting. At that time he still didn't [unintelligible] I struck him again he kept fighting after the third strike he went

down to the floor as he went to the floor I secured him with mechanical restraints.

Captain Brereton: next question.

Inmate Samuels: alright before officer umm...

Captain Brereton: it's Woody.

Inmate Samuels: Yeah I want you to ask Officer Woody uh on his day [unintelligible] what prompted him or Bellinger to escort me to my cell?

Captain Brereton: You're asking him to think what was in Bellinger's mind at that time?

Inmate Samuels: No I said what prompted him or Officer Bellinger

Captain Brereton: no Bellinger said he [unintelligible] you want him to elaborate what was in Bellinger's mind at that time?

Inmate Samuels: No alright let me rephrase the question.

Captain Brereton: Alright.

Inmate Samuels: I would like to know why was he escorting me to my cell?

Captain Brereton: He never said he escorted he said he was three cells behind Bellinger. But I'm going to ask you a question Officer Woody. During the ahhh the time when Bellinger was speaking to this inmate and he failed to comply with the [unintelligible] direction ahhh were you present there to hear the conversation that Bellinger had with him?

C.O. Woody: No I wasn't.

Captain Brereton: So at that point you didn't know why Officer Bellinger was escorting him back to his cell?

C.O. Woody: No sir.

Captain Brereton: So you just saw Officer Bellinger escorting him and you followed behind just incase something transpired, is that it?

C.O. Woody: Yes sir.

Captain Brereton: What is your question?

Inmate Samuels: ahh my next question is that did he have anything did he say anything to me prior to me being escorted to on on towards my cell?

Captain Brereton: it's a two part question he had Woody. Do you recall seeing this inmate before Bellinger was escorting him?

C.O. Woody: No sir.

Captain Brereton: Second question, do you recall he was saying anything to this inmate?

C.O. Woody: No sir.

Inmate Samuels: Alright my next question if if he didn't see me then how did he know Officer Bellinger was escorting me?

Captain Brereton: That's why we ask does he recall. Officer Woody where were you located when Officer Bellinger started this escort?

C.O. Woody: I was walking down Victory gallery towards the ah we have a pat frisk [unintelligible] we uh inmate clothing on when we do a search. Uhhh I saw [unintelligible] green pants up the stairs and I saw the inmate and I saw Officer Bellinger follow him once I saw that I decided to go up with him to see what was going on.

(END OF TAPE)

Captain Brereton: We still here Woody you don't have to say nothing yet. Testing testing 123.

(Tape stopped and started)

Captain Brereton: The day is November 23, 2010 this is side B of the tape this is a Tier 3 hearing this is Captain Brereton . In the room with me:

C.O. Ortiz: Correction Officer Raymond Louis Ortiz, badge number 9622 Captain.

Captain Brereton: on the telephone is:

C.O. Woody: Officer R. Woody, Jr.

Captain Brereton: name and number:

Inmate Samuels: Kenneth Samuels, 97A0331.

Captain Brereton: as you were saying you didn't hear what Woody said?

Inmate Samuels: No.

Captain Brereton: He said he saw green pants going down the gallery and Officer Bellinger escorting him. So he decided to follow.

Inmate Samuels: umm he said he seen a green pants going down the gallery? Which gallery did he see me going down?

Captain Brereton: If he's on Victory gallery.

Inmate Samuels: Yeah but you....

C.O. Woody: excuse me sir.

Inmate Samuels: I object [unintelligible] answer my question.

Captain Brereton: Excuse me , excuse me, excuse me.

Inmate Samuels: Yes?

C.O. Woody: Excuse me sir?

Captain Brereton: Yeah?

C.O. Woody: I didn't say going down the gallery sir. I said going up the stairs.

Captain Brereton: Going up the stairs?

C.O. Woody: Yes sir.

Captain Brereton: Alright, next question?

Inmate Samuels: Alright, umm umm next question is did did uh on his way while while coming behind Woody or any other officer did he ah ah attempt to to have the officer, the gallery officer lock me in?

Captain Brereton: Officer Woody?

C.O. Woody: Yes sir?

Captain Brereton: Were you on the North end or the South end of the gallery?

C.O. Woody: We were we were on the North side of the block. We walked down the North side towards the South.

Captain Brereton: Alright, and where is the Gallery Officer located?

C.O. Woody: she is loc is located in the middle of the gallery between [unintelligible]

Captain Brereton: And from where you were standing at that time did you see the Gallery Officer?

C.O. Woody: I didn't see the Gallery Officer. I didn't speak to her.

Captain Brereton: [unintelligible] next question.

Inmate Samuels: Uh I have no further questions for this witness.

Captain Brereton: Thank you Officer Woody.

C.O. Woody: Alright. (hangs up phone)

Captain Brereton: Any other questions?

Inmate Samuels: Yeah um like I was saying before my um assistance you told me there's there's five witnesses who was going to testify.

Captain Brereton: He just....(interrupted by inmate Samuels)

Inmate Samuels: I understand that....

Captain Brereton: excuse me he read into the record and you signed it right there.

Inmate Samuels: I understand that but he showed me another paper.

Captain Brereton: Uh and what was on the paper?

Inmate Samuels: Uhh cell locations and names of witnesses who is willing to testify and who are not willing to testify.

Captain Brereton: Alright so we still got to get Officer Downtin and Officer Gould. The time is 12:37 p.m. this hearing is adjourned.

(Tape stopped)

Captain Brereton: It is November the 23rd, 2010 the time is approximately 3:20 p.m. this is a continuation of a Tier 3 hearing. In the room with me is:

C.O. Downtin: C. Downtin, Correction Officer.

C.O. Ortiz: Correction Officer Raymond Louis Ortiz, badge number 9622.

Captain Brereton: Name and number:

Inmate Samuels: Kenneth Samuels, 97A0331.

Captain Brereton: Same thing stands again any question you got for the witness you direct the question to me if I think it is relevant I will ask the witness. Do not speak to none of these witnesses directly. Do we understand each other?

Inmate Samuels: Yes.

Captain Brereton: Officer ah Downtin, were you on duty on November 16th, 2010?

C.O. Downtin: Yes.

Captain Brereton: What was your job for that day?

C.O. Downtin: uh unit 47.

Captain Brereton: Speak up.

C.O. Downtin: Unit 47 uh I dropped a rec uh [unintelligible] bridge.

Captain Brereton: Alright, any questions for Officer Downtin?

Inmate Samuels: Yes.

Captain Brereton: Speak up.

Inmate Samuels: Yes. Uh ask Officer Downtin the day in question uh did he hear the announcement from the block OIC uh informing the inmates that was waiting on the flats for the bathhouse run to return any cigarettes they might have had on their possession back to their cells?

Captain Brereton: Uh what does this have to do with this here?

Inmate Samuels: uh this is how it all started.

Captain Brereton: What all started?

Inmate Samuels: This whole this is how the whole incident..

Captain Brereton: If he, if he say yeah or no what that gon what that gonna do?

Inmate Samuels: Huh? well then that show that uh the ticket written by umm Officer Bellinger...

Captain Brereton: Officer Bellinger's ticket don't say nothing about [unintelligible].

Inmate Samuels: Yeah he said Officer Bellinger said that he umm when the bathhouse when the counselor call outs came back he told me to go lock out.

Captain Brereton: Alright....

Inmate Samuels: well contrary to that I was waiting on the flats for the bathhouse to go out.

Captain Brereton: But the Officer gave a direct order right?

Inmate Samuels: He never talked to me.

Captain Brereton: So the loud speaker how did how didn't that contradict what he said to you?

Inmate Samuels: Huh?

Captain Brereton: How's that in contradict what he said to you?

Inmate Samuels: Well I already a witness testify that I was waiting on the flats for the bathhouse run umm...

Captain Brereton: he didn't say he was waiting for the bathhouse or he said he went to get his stuff to go to the gym he said he saw you walking down the steps and he was going down the steps he saw you going up them with Bellinger.

Inmate Samuels: when we came back from the counselors call outs he seen me he said he testified he seen me grab my bag out of the bag that was downstairs.

Captain Brereton: No he went to grab he didn't say he seen you grab nothing. Lets go one aint got to do with the other don't waste my time with all this..

Inmate Samuels: [unintelligible]

Captain Brereton: Excuse me, you got any more questions for this witness?

Inmate Samuels: Yeah um um after after well you isn't it well I need to ask whether or not he informed Officer Bellinger that ah to have me lock in. Because he did not call whiskey gallery for the bathhouse run.

Captain Brereton: He was not the OIC what question you go for him?

Inmate Samuels: That's what I'm asking.

Captain Brereton: You hear what his location was?

Inmate Samuels: Yeah he was [unintelligible]

Captain Brereton: alright...

Inmate Samuels: on the um mess-hall landing.

Captain Brereton: He said it was part of his job. Why would he tell Bellinger to tell you to lock in?

Inmate Samuels: Because he said he didn't call W gallery for bathhouse run.

Captain Brereton: He don't call nothing.

Inmate Samuels: That's what...

Captain Brereton: who makes the announcements for the ah bathhouse runs and stuff?

C.O. Downtin: For the bathhouse runs? I make the announcements from the back.

Captain Brereton: From the back? You got a loud speaker back there?

C.O. Dowtin: Yes.

Captain Brereton: Alright, and uh on the bathroom question when Officer Dowtin got involved in this incident was the ah bathhouse run called yet?

C.O. Dowtin: I believe had been through the first three houses of the bathhouse run.

Captain Brereton: hmm mm

C.O. Dowtin: which was U-T-S

Captain Brereton: Alright, come on man I got a job to go to.

Inmate Samuels: On the day in question did you uh inform uh Officer Bellinger to tell....

Captain Brereton: excuse me, there's nothing in the ticket saying Officer Dowtin talked to him.

Inmate Samuels: He's not even in the.....

Captain Brereton: excuse me that's what I just said. So why would he got to inform Bellinger he got a loud speaker. Next question:

Inmate Samuels: Alright um after they the announcement for inmate who have the who has who have tobacco....

Captain Brereton: excuse me, excuse me...

Inmate Samuels: I'm getting to the point...

Captain Brereton: excuse me get to the question cause he didn't establish that fact yet. We ain't going through that. Get to the question.

Inmate Samuels: Alright, did he never did you at any time I need to ask him at any time inform any officer to uh see what this inmate was coming off of R gallery for?

Captain Brereton: Did we establish that he saw you?

Inmate Samuels: You....

Captain Brereton: excuse, excuse me...

Inmate Samuels: how many [unintelligible]....I'm done with the witness, I'm done.

Captain Brereton: Good.

Inmate Samuels: I'm done. [unintelligible]

Captain Brereton: Excuse me, excuse me, excuse me you said you were done don't talk to him. [unintelligible]. Officer Downtin?

C.O. Downtin: Yes sir?

Captain Brereton: On the afternoon in question, did you recall if you see Officer Bellinger escorting the inmate back to his cell?

C.O. Downtin: No because I was on the bridge.

Captain Brereton: Alright, so from where you were at you wouldn't see any conversation?

C.O. Downtin: No he's below me.

Captain Brereton: Alright. When the incident took place, it was established that Officer Woody was following Bellinger down the gallery not escorting. He was three cells behind. When the alleged incident jumped off did you respond to the area?

C.O. Downtin: I responded to the area, yes.

Captain Brereton: Alright. And at that time what did you see?

C.O. Downtin: The inmate was in handcuffs, uh Officer Bellinger was bleeding and supervisors they came onto the scene.

Captain Brereton: Oh alright so you were one to first response [unintelligible]

C.O. Downtin: No.

Captain Brereton: You was [unintelligible]

C.O. Downtin: Right.

Captain Brereton: Alright and do you recall is it [unintelligible]

C.O. Dowtin: No.

Captain Brereton: Do you recall any such announcement made that afternoon?

C.O. Dowtin: No I don't recall.

Captain Brereton: And uh was there any announcement made when the uh the Counselor call outs [unintelligible] return to your cell or anything.

C.O. Dowtin: Uh no there was no announcement for the Counselor call outs coming in. I didn't announce it?

Captain Brereton: But was it made by the OIC or you can't remember hearing anything?

C.O. Dowtin: I can't remember hearing that nor recalling that.

Captain Brereton: Alright normal procedure when you come back from counselor call out to take back to his cell?

C.O. Dowtin: Yes they go back to their cells.

Captain Brereton: And then they go one from [unintelligible] to where they are going?

C.O. Dowtin: Exactly.

Captain Brereton: Alright. And uh when you got to the gallery was this inmate bleeding too or you don't see that?

C.O. Dowtin: Uh the inmate was bleeding.

Captain Brereton: Alright, so was there a lot of blood on the gallery?

C.O. Dowtin: Yes there was blood on the gallery.

Captain Brereton: And was it cleaned up right away or how long?

C.O. Dowtin: I don't recall I left the uh area uh before it was cleaned.

Captain Brereton: Alright, thank you there ah Dowtin. Is his next witness up there already?

(inaudible)

Captain Brereton: Alright hurry up man state your name for the record:

Inmate Clemons: Patrick Clemons

Captain Brereton: Cant hear ya.

Inmate Clemons: Patrick Clemons, 93A2426.

Captain Brereton: And where do you lock?

Inmate Clemons: Whiskey 48.

Captain Brereton: Alright you were called here for incident that took place on November 16th 2010. Were you on the gallery when the incident took place?

Inmate Clemons: Actually I was locked inside the slop sink.

Captain Brereton: Were you on the gallery?

Inmate Clemons: I was on the gallery.

Captain Brereton: And why were you locked in the slop sink?

Inmate Clemons: When I went in the slop sink to clean out to clean out the mops the officer came and locked me in the slop sink.

Captain Brereton: Alright so did you see any of the action that took place?

Inmate Clemons: I couldn't see nothing from the slop sink sir.

Captain Brereton: Alright, but you heard the commotion?

Inmate Clemons: I heard some commotion.

Captain Brereton: Alright, same things stands, any questions you got for the witness you direct the question to me I think it's relevant I'll ask the witness. Got any questions for this witness?

Inmate Samuels: Yes, um prior to when [unintelligible] him being locked in the slop sink did he observe me coming back from the gallery dropping something inside my cell? And...

Captain Brereton: Hold on man.

Inmate Samuels: Alright.

Captain Brereton: Mr. Clemons?

Inmate Clemons: Yes?

Captain Brereton: Do you know this inmate right here?

Inmate Clemons: Yes.

Captain Brereton: Where was he locking before he was in SHU?

Inmate Clemons: Uhh, W 20 sir.

Captain Brereton: W 20?

Inmate Clemons: Yeah.

Captain Brereton: Alright. On the afternoon in question do you recall seeing this inmate?

Inmate Clemons: As I was walking towards the North side of the gallery he was going towards his cell to throw something in his cell.

Captain Brereton: And who was he with?

Inmate Clemons: I think he was by himself.

Captain Brereton: Next question.

Inmate Samuels: Alright, um after did you did you happen to hear.....

Captain Brereton: why do I got to repeat myself?

Inmate Samuels: uh I wanna ask him whether or not he heard uh an announcement regarding inmates returning cigarettes back to their cell?

Captain Brereton: Do you recall the announcement being made that afternoon, Mr. Clemons?

Inmate Clemons: I can't, no I don't. About cigarettes being returned to the cell?

Captain Brereton: mm hmm.

Inmate Samuels: Yeah...

Captain Brereton: Excuse me.

Inmate Samuels: Okay.

Captain Brereton: I don't like repeating myself. This is the fourth time today. Do you recall any such announcement about any inmate got cigarettes in their pocket take them back to their cell now?

Inmate Clemons: I don't recall such announcement. [unintelligible]

Captain Brereton: Alright, next question.

Inmate Samuels: Um, well well I want to know whether or not which officer locked him inside the slop sink?

Captain Brereton: What does that have to do with this?

Inmate Samuels: They locked him in there for a reason. So he doesn't witness what they was gonna do.

Captain Brereton: Like I said he said he was locked in the slop sink, he heard commotion. What does that have to do with who locked him in the slop sink?

Inmate Samuels: [unintelligible] like I said...

Captain Brereton: excuse me what that got to do with this here?

Inmate Samuels: well...

Captain Brereton: You the one on trial not him.

Inmate Samuels: Yeah but if you're not going to let me....

Captain Brereton: excuse me I ask the question here, answer the question.

Inmate Samuels: [unintelligible] you cut me off.

Captain Brereton: Answer the question. What that has to do what's the relevance?

Inmate Samuels: What is the relevance? They didn't want him to witness what they was doing to me.

Captain Brereton: That's normal procedure. Something jump off they get the other inmates out the area.

Inmate Samuels: Alright he could have establish that I wonder which officer was it so he can probably establish that the Officer who just testified Officer uh Dillinger or Bellinger or whatever his name was the one who locked him in the slop sink which would uh uh uh um which would prove what I was saying I was assaulted....

Captain Brereton: Do you know Officer Bellinger?

Inmate Clemons: Bellinger? Um, yes I do.

Captain Brereton: Alright. The officer that just left here what was his name?

Inmate Clemons: Delton or Downtin something like that.

Captain Brereton: Thank you so how was that how's that Officer Bellinger?

Inmate Samuels: I said I don't I don't know which one is which which officer is who. I don't know that.

Captain Brereton: You heard him that's Downtin.

Inmate Samuels: And I just said the officer that just testified.

Captain Brereton: Good. If he's on the bridge how he gonna get past you to lock the slop sink in.

Inmate Samuels: Cause he's lying, he's lying

Captain Brereton: That's in, excuse me that's in your opinion.

Inmate Samuels: That not [unintelligible] that's not

Captain Brereton: that's your opinion.

Inmate Samuels: that's the truth. It was all [unintelligible] came out [unintelligible] did that shit to me man.

Captain Brereton: I wasn't there.

Inmate Samuels: I know [unintelligible]

Captain Brereton: [unintelligible]

Inmate Samuels: but you keep cutting me off [unintelligible]

Captain Brereton: excuse me, [unintelligible] wasn't there. Who was the Gallery Officer in the afternoon?

Inmate Clemons: Officer the steady the regular three to eleven Officer Gould.

Captain Brereton: Alright. You know who the second and third was up there [unintelligible].

Inmate Clemons: I don't know.

Captain Brereton: Alright. So you remembered who locked you in the slop sink?

Inmate Clemons: Yes.

Captain Brereton: Who was it?

Inmate Clemons: The Gallery Officer, Officer Gould.

Captain Brereton: Move it right along.

Inmate Samuels: Okay that's it I don't have anymore questions.

(inaudible – background noise phone dial tone)

Captain Brereton: Oh Morrison?

C.O. Ortiz: Yeah he's outside.

Captain Brereton: Alright.

C.O. Ortiz: Want me to get him in?

Captain Brereton: Yeah.

C.O. Ortiz: Come on Morrison.

Captain Brereton: State your name for the record:

Inmate Morrison: [inaudible]

Captain Brereton: Speak up so I can hear ya.

Inmate Morrison: My name Fernando Morrison

Captain Brereton: You got a number?

Inmate Morrison: 10A2947

Captain Brereton: What's your cell location?

Inmate Morrison: Whiskey 68 sir.

Captain Brereton: How long you in that cell?

Inmate Morrison: Probably about 2 months now

Captain Brereton: Alright. Where you in your cell on on November 16th, 2010 around 7:20 p.m.?

Inmate Morrison: I wasn't I was I was on the gallery and then I was in the shower.

Captain Brereton: So you didn't go to rec that afternoon?

Inmate Morrison: No sir.

Captain Brereton: Why you keep lock?

Inmate Morrison: No I'm not keep lock.

Captain Brereton: So why you wasn't at rec?

Inmate Morrison: I don't have a [unintelligible]

Captain Brereton: You don't go to the gym either?

Inmate Morrison: Once in a while.

Captain Brereton: Alright. Ah you ah aware of the incident that took place on the gallery?

Inmate Morrison: Nope. The only thing I I know I hear [unintelligible] I hear a commotion and that's it.

Captain Brereton: Alright. Any questions for the witness?

Inmate Samuels: uh well what did he hear?

Captain Brereton: He said he heard a commotion.

Inmate Samuels: Did you hear..

Captain Brereton: Now listen didn't I just say don't talk to the witness?

Inmate Samuels: Alright. I want to ask him whether or not did he hear any screaming any any officer saying uh uh get down did he did did what did he hear besides just a commotion?

Captain Brereton: No you ask a specific question you don't ask what did he hear. I can hear a whole lot of things all day long.

Inmate Samuels: Alright.

Captain Brereton: You hear a commotion right?

Inmate Morrison: Yeah.

Captain Brereton: Did you hear anybody screaming for help? Did you hear anybody screaming get up off me?

Inmate Morrison: I just heard like a tumbling. [unintelligible].

Captain Brereton: You hear a tumbling [unintelligible].

Inmate Morrison: Just a tumbling, tumbling.

Captain Brereton: Oh alright.

Inmate Morrison: [unintelligible]

Captain Brereton: next question:

Inmate Samuels: Well if he didn't observe anything then that...

Captain Brereton: So he cant observe anything he said he's locked in the slop sink.
(background noise – phone dial tone)

Inmate Samuels: [unintelligible]

Captain Brereton: Thank you Officer, I mean uh inmate um Morrison.

C.O. Ortiz: [unintelligible]

Captain Brereton: Any more questions?

Inmate Samuels: umm, I don't have any witnesses here.

Captain Brereton: Your witnesses are done.

Inmate Samuels: Oh so [unintelligible]

Captain Brereton: Any more questions?

Inmate Samuels: I thought two more witnesses [unintelligible]
(Phone ringing in the background)

Captain Brereton: Excuse me man don't raise your voice in here.

Inmate Samuels: I'm not raising my voice.
(Person answers phone- "Hello")

Captain Brereton: [unintelligible] this Captain Brereton.

C.O. Gould: Hi how are you?

Captain Brereton: I'm doing fine. State your name for the record. State your name for the record.

C.O. Gould: Latoya Gould. Oh C.O. Gould sorry.

Captain Brereton: Alright. Officer Gould in the room with me is Officer Ortiz and inmate Samuels 97 alpha 331, who used to lock in whiskey 20. On umm November 16th 2010 were you on duty?

C.O. Gould: Yes I was.

Captain Brereton: Alright. Ahh do you recall ah there was an altercation on your gallery?

C.O. Gould: Yes there was.

Captain Brereton: Were you involved in it?

C.O. Gould: No I was not.

Captain Brereton: Alright. You recall where you were standing when the incident took place? Were you on the same side of the gallery?

C.O. Gould: Uh I was in I was in the office at first then I saw, then I saw one of the officers walk by so that's when I got up and I closed my office and I went and I made sure, I made sure the gallery was clear.

Captain Brereton: Okay. Any questions to the witness you direct the questions to me.

Inmate Samuels: Alright I would like to ask whether, whether or not she observed any of the um altercation with the officer and myself.

Captain Brereton: Officer Gould?

C.O. Gould: Yes?

Captain Brereton: Did you see any of the ah altercation or the assault the ah use of force to subdue the inmate?

C.O. Gould: I saw [unintelligible] was him spun around. [unintelligible] and I saw him turn around and swing [unintelligible] that's what I saw.

Captain Brereton: Alright. Any other questions?

Inmate Samuels: um I would like to ask whether or not uh prior to uh observation did any of the officers say anything to her?

Captain Brereton: I know you just heard her say she was in her office then she saw the [unintelligible] passed by so she got up and closed the gate. [unintelligible] and she closed her gate to her office and start to clear the gallery.

Inmate Samuels: Well it would it had to be a reason why she....

Captain Brereton: she this is standard operation procedure. She saw you being escorted to your cell.

Inmate Samuels: Standard operation procedure. Um did she open my cell? I want to know whether or not she [unintelligible].

Captain Brereton: Hold on now.

Inmate Samuels: [unintelligible]

C.O. Gould: Yes.

Captain Brereton: Officer Gould?

C.O. Gould: Yes?

Captain Brereton: Ah, was his cell on deadlock or did you get to pull the break which one?

C.O. Gould: Inmate Samuels never never told me that he was coming back. He came back from counselor call out I do remember that he came back from no I remember that he didn't [unintelligible] he never informed me that he was back from counselor call out. Never came to me and said Ms. Gould I'm on the gallery can you let me in...nothing.

Captain Brereton: Alright. And uh at the time when he was being escorted by the office..

C.O. Gould: Say again?

Captain Brereton: At the time he was being escorted back to his cell by Officer Bellinger and whoever else was there umm did you have to go down the gallery and unlock his cell or was it on break?

C.O. Gould: Um, it was on the break [unintelligible].

Captain Brereton: Alright. Next question.

Inmate Samuels: Yes, prior to the incident uh she well prior to the incident she just says the part that she observed me come back on the gallery I didn't inform her of what I was doing on the gallery.

Captain Brereton: No she didn't say that. She said you never informed you back on the gallery

Inmate Samuels: uh huh

Captain Brereton: you see what I'm saying?

Inmate Samuels: Alright I never informed her but that was prior to uh uh was that prior to the incident taking place?

Captain Brereton: Well it had to be because you never came back to tell her that you was back on the gallery.

Inmate Samuels: Alright.

Captain Brereton: Officer Gould?

C.O. Gould: Yes? Hello?

Captain Brereton: Did you see this inmate prior to the incident taking place not when he was being escorted back prior to that? When he came back from the Counselor call did you happen to see him or know that the counselor calls was back or that he was back on the gallery?

C.O. Gould: No he never came to me. Never once did he come to me. I let [unintelligible] never once.

Captain Brereton: Alright next question.

C.O. Gould: I didn't even know who was involved.

Inmate Samuels: No I wasn't. What the question was I wanted to know whether or not she seen me come by the gallery.

Captain Brereton: She just said she never saw you.

Inmate Samuels: She said I never came to her.

Captain Brereton: She just said she never sa.....next question.

Inmate Samuels: Alright um did she see me um leave the gallery after that?

Captain Brereton: After what?

Inmate Samuels: After she seen me come by the first time.

Captain Brereton: She said she didn't see you she saw you been escorted back to your cell. Do you have a question somewhere there?

Inmate Samuels: I'm thinking right now. I'm thinking of the next question. Uh based upon the testimony to which she just said she observed me walk by didn't say nothing to her.

Captain Brereton: No she said she never saw you came back from counselor call out you never came to her to tell her that you were back let me in my cell anything. The first time you saw him Officer Gould can you clarify when the first time you saw him after he got back from counselor call out?

C.O. Gould: I never saw him. [unintelligible] the porter told me that he was W-20 I never knew who it was.

Captain Brereton: Alright. Next question:

Inmate Samuels: Um no more questions that's it. I don't have anymore questions for her.

Captain Brereton: Officer Gould?

C.O. Gould: Yes?

Captain Brereton: You said you saw him turn quickly and strike the Officer is that what you testified to?

C.O. Gould: He came up the [unintelligible] and turned and swung.

Captain Brereton: Alright. Thank you Officer Gould. Hope you get well soon.

C.O. Gould: Thank you very much.

Captain Brereton: Any other questions?

Inmate Samuels: yeah well she just testified saying that she didn't see me now she's saying she seen me come off the gate and swinging. Uh...

Captain Brereton: She said from day one she saw who it was going down she didn't know who it was she saw them escorted. The porter told her it was whiskey 20.

Inmate Samuels: She just testified that she...

Captain Brereton: She said whiskey 20.

Inmate Samuels: After the porters told her.

Captain Brereton: Do you have any more questions?

Inmate Samuels: No I don't have any, she's gone.

Captain Brereton: Excuse me, I'm still here. Are you finished?

Inmate Samuels: No I'm not finished. Umm there's another witness.

Captain Brereton: There's no other witness here.

Inmate Samuels: Yes um the Sergeant. Sergeant Barnes.

Captain Brereton: And what he's going to testify to?

Inmate Samuels: That he seen me coming down the gallery. Um that they made the announcements for me to take the cigarettes back.

Captain Brereton: They made, they made announcements specifically for you?

Inmate Samuels: Not, not specifically.

Captain Brereton: Specifically for you?

Inmate Samuels: No not specifically for me. But they made the announcement that

Captain Brereton: The time is 3:45 p.m this hearing is now adjourned.

Captain Brereton: Today is November 23th 2010 this is Captain R. Brereton. Continue tape three on Samuels 97 alpha 0331. In the room with me is:

Sgt. Barnes: Sergeant M. Barnes.

C.O. Ortiz: Correction Officer Raymond Louis Ortiz, badge number 9622 sir.

Inmate Samuels: Kenneth Samuels, 97A0331.

Captain Brereton: Same [unintelligible] stands anything I think is relevant you will direct your questions to me I will ask the witness. Do not speak to the witness directly. Sergeant Barnes were you on duty on November 16th 2010?

Sgt. Barnes: Yes I was sir.

Captain Brereton: What was your assignment that day?

Sgt. Barnes: Uh HBB Housing Sergeant, tour three, three to eleven.

Captain Brereton: Alright. What's the question you would like to ask the Sergeant?

Inmate Samuels: Ah the question I would like to ask him was prior to the bathhouse being run run out to to the bathhouse then out the block was there an announcement made by Officer Reid concerning inmates having tobacco products and and um uh to return the tobacco products back to they cell?

Captain Brereton: Sergeant Barnes, do you recall if the OIC that afternoon make announcement about inmates with tobacco products and returning them to their cell?

Sgt. Barnes: Sir I do not recall if he made an announcement. He has prior made an announcement and that program has been in effect for over a month or more where inmates are not allowed to take tobacco tobacco products out.

Captain Brereton: uh, next question.

Inmate Samuels: Alright prior to the incident uh I wanna know if he observed me walking down R company?

Captain Brereton: Sergeant Barnes, do you know this inmate [unintelligible].

Sgt. Barnes: Yes sir, I know him because being part of a use of force that happened on the day in question.

Captain Brereton: But other than that do you know the inmate personally?

Sgt. Barnes: Personally I do not know him.

Captain Brereton: So uh the question you need to ask do you recall if you seen him before the incident took place?

Sgt. Barnes: I I did not ssee or identify him. I was sitting in a chair on gallery, on Q gallery and did notice inmate walking very fast down R gallery and there were some officers behind him.

Captain Brereton: Alright. Next question.

Inmate Samuels: That's all I want to know.

Captain Brereton: Serge were you the one who responded to the incident on um whiskey gallery on that afternoon?

Sgt. Barnes: Yes I was sir.

Captain Brereton: Alright. And was this inmate the one involved in the incident?

Sgt. Barnes: Yes he was sir.

Captain Brereton: Alright and Officer Bellinger, was he bleeding?

Sgt. Barnes: Sir it was dark on the gallery I did not initially see him bleeding but I know that when I responded Bellinger along with Officer Woody was two of the officers on that was on the gallery the inmate was laying in a [unintelligible] position face down on the ground and he was handcuffed.

Captain Brereton: Alright. Thank you Serge. Anything else?

Inmate Samuels: Yeah um the two tickets itself um they seem to be written by one person even though there different signatures.

Captain Brereton: Can you show me somewhere where that is illegal?

Inmate Samuels: Huh?

Captain Brereton: Can you show me somewhere where that is illegal?

Inmate Samuels: Well the officer who who who um supposed to have wrote the report he signed it as if he is the author of the report.

Captain Brereton: Like I said can you show me somewhere where that is illegal?

Inmate Samuels: Can you show me somewhere where it's not illegal?

Captain Brereton: Excuse me can you show me somewhere where it is illegal?

Inmate Samuels: [unintelligible]

Captain Brereton: Lets move on.

Inmate Samuels: Nah well I'm objecting to that.

Captain Brereton: You can object to anything.

Inmate Samuels: Alright.

Captain Brereton: At this time is 3:58 we will stop the tape, make a written disposition at which time we will come back and read the disposition into the record. .

Inmate Samuels: Okay.

Captain Brereton: This hearing is adjourned.

Captain Brereton: The date is November 23, 2010 this Captain R. Brereton I've made a written disposition and I will read it into the record. In the room with me:

C.O. Ortiz: Correction Officer Raymond Louis Ortiz, badge number 9622 Captain.

Inmate Samuels: um, Kenneth Samuels, 97A0331.

Captain Brereton: Alright we also have a 2176 three witnesses testified via phone because either sick on workmen's comp and be unavailable. Officer Bellinger also testified by telephone and the inmate was allowed to ask question. Officer Woody same thing testified via telephone inmate present to ask questions. Officer Gould testified via telephone and was, inmate was present and allowed to ask questions.

Statement of evidence relied upon: I found the written reports by Officers Bellinger and Woody to be credible. Officer Gould testified that she saw this inmate turn and swing at the officer. Inmate Nji 07A0452 testified that he saw a struggle on the gallery and he saw the officer swing their sticks. Inmate Clemons, P. 93A2420 stated that he was locked in the slop sink and he heard a struggle on the gallery. C.O. Bellinger stated that the inmate swung and struck him in the face.

Reason for the disposition: This was a violent unprovoked attack on Officer Bellinger and it continued until the other officer responded. It's extremely important that inmates confined to a maximum security facility such as this follow staff direction. The seriousness of this case warrants this disposition. This type of violence will not be tolerated and this will serve as a reminder to you that you must follow staff direction and it should also encourage you to improve your behavior.

You were found guilty of 104.11 violent conduct, 104.13 creating a disturbance, 100.11 assault, 106.10 refusing a direct order, not guilty of out of place 109.10, guilty of 109.12 movement regulation, 104.11 violent conduct on Officer Woody was not guilty, not guilty on creating a disturbance on the second ticket, guilty on 111 assaulting staff, 107.10 interference with an employee, 106.10 refusing a direct order. Do you understand the reason for the disposition?

Inmate Samuels: Yes.

Captain Brereton: Disposition been imposed. You got thirty months SHU, 11/16/10 – 5/16/2013, loss packages, loss commissary, loss of phone 11/23/10 to 5/23/13. And twelve months recommended good time. Sign both of these. This 2176, the time 4:20 pm the inmate is signing the disposition form. And he's given this disposition for himself and the mandatory disciplinary charge of five dollars will be assessed from your account automatically. Do you understand that?

Inmate Samuels: Yes.

Captain Brereton: Also you have I will give you an appeal form. The address is on the front. You must clearly state what you object to so the individuals reviewing your case will know what your appealing. Do you understand? You have thirty days to which to file the appeal. Any questions?

Inmate Samuels: No.

Captain Brereton: I'm giving you a copy of 2176. Copy of section 12 of the disposition sheet. Is that correct?

Inmate Samuels: [unintelligible]

Captain Brereton: Any questions?

Inmate Samuels: The time 4:21 p.m. this hearing is concluded.

(END OF TAPE)



State of New York
Department of Corrections and Community Supervision
SING SING CORRECTIONAL FACILITY
354 Hunter Street
Ossining, New York 10562-5442
(914) 941-0108

BRIAN FISCHER
COMMISSIONER

PHILIP D. HEATH
SUPERINTENDENT

CERTIFICATION

RECEIVED
NYS OFFICE OF THE ATTORNEY GENERAL

RE: Inmate Samuels, Kenneth

OCT 05 2011

DIN: 97A0331

OFFICE OF LEGAL RECORDS
ALBANY, NEW YORK 12224

Nelinda Brown, being duly sworn, deposes and says:

I am a KBS1, employed by the Department of
(Title)

Corrections and Community Supervision. I have transcribed the tape(s) numbered
10-2433/2434 of the Tier 3 hearing on the above-referenced inmate, as I have
heard to the best of my ability. I further certify that I am not related to any of the parties of
this matter by blood or marriage, and that I have no personal interest in this matter.

[Signature]
(Signature)

Sworn to before me this

29th day of September, 20 11

[Signature]
Notary Public

Dawn M. Mason
Notary Public State of New York
Qualified in Westchester County
04MA8147385
My Commission Expires 5/30/2014

Stilson
11-130726

Exhibit F

Thursday November 16, 2010 Tour TT Cont ²⁷

Date 11-16-10 Day Thursday Unit/Gallery HBA

Tour 3 Unit/Gallery Census: Start _____

OIC _____ Royan/2nd Officer _____

Area Supervisor Sgt Barnes & Sgt Dumble

Post Order Review 1st Officer _____ 2nd Officer _____

Key Ring# 1 No. of Keys 7 Radio/PAS# 715

Fire & Safety Rpt Completed _____

Keyplocks As posted

28
Continued Tour 3 11-16-10 Tuesday

APPROX
1:25

Wipeate Samuels w. 20. 9-7-10-31
assault on w. gallery
Area secured for all super...
[REDACTED]

Exhibit G.

WITNESS INTERVIEW NOTICE (For Superintendent's & Disciplinary Hearings)

Samuels King King Correctional Facility
K 97A0331
 Inmate Name (Print) DIN#

An inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals.

If permission to call a witness is denied, or if a requested witness testifies outside the presence of the inmate charged and/or if the inmate is not permitted to review the testimony of a witness, the reason for such determination must be recorded on this form and copies given to the inmate by the hearing officer and included in the hearing record.

Reference: Directive #4932, Sections 253.5 and 254.5.

Co. T. Bellinger
 Requested witness:

- ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 11-23-10 Explanation: Officer testified via telephone
and the inmate was allowed to ask question

Co. R. Woody Jr
 Requested witness:

- ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 11-23-10 Explanation: Officer Woody testified via
telephone and the inmate was present
and was able to ask questions.

Co. F. Gould
 Requested witness:

- ☐ Permission to call the requested witness is denied.
☒ Requested witness will testify outside inmate's presence.
☐ Inmate is not permitted to review requested witness's testimony.

Date: 11-23-10 Explanation: Co. Gould was out sick
and testified via telephone and the inmate
was present and was allowed to ask
questions.

Signature [Signature] f. Samuels 97A0331 11/23/10
 Hearing Officer Inmate DIN Date Received

Exhibit H

12/17/10
DCP004
12 RO
13 RO

PAGE ① OF ②

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
SUPERINTENDENT HEARING DISPOSITION RENDERED

PAGE 1

10-2433 C/W 2434 C

SING SING GN

TAPE NUMBER

DIN: 97A0331 NAME: SAMUELS, KENNETH

LOCATION: HS-D2-E01

INCIDENT DATE & TIME: 11/16/10 07:20 PM TIER 3
REVIEW DATE: 11/17/10 BY: LT MCMORROW
DELIVERY DATE & TIME: 11/17/10 08:00 AM BY: CO R.L. ORTIZ

HEARING START DATE & TIME: 11/24/10 1:25 PM BY: [Signature]

HEARING END DATE & TIME: 11/23/10 4:21 PM BY: [Signature]

WAS THERE NEED FOR A FORMAL MENTAL HEALTH/INTELLECTUAL CAPACITY ASSESSMENT? Y ☒ N
DOES THIS MISCONDUCT MEET THE CRITERIA FOR WORKPLACE VIOLENCE? Y ☒ N

CHARGE NUMBER DESCRIPTION OF CHARGES REPORTED BY DISPOSITION

104.11	VIOLENT CONDUCT	CO T.BELLINGER	Guilty
104.13	CREATING A DISTURBANCE		Guilty
100.11	ASSAULT ON STAFF		Guilty
106.10	REFUSING DIRECT ORDER		Guilty
109.10	OUT OF PLACE		Not Guilty
109.12	MOVEMENT REGULATION VIOLATION		Guilty
104.11	VIOLENT CONDUCT	CO R.WOODY	Not Guilty

Tier II/III Review
I have reviewed this hearing and find that it complies with Chapter V Title 7 of N.Y.C.R.R.
[Signature] 12/4/10
Signature / Date

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE(\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE. *

PENALTY CODE	DESCRIPTION	PENALTY MO	START DATE	RELEASE DATE	SUSPEND MO DAYS	DEFERRED MO DAYS	RESTITUTION \$\$\$\$. 00
A000	Sten	30	11-16-10	5-16-13			
E000	LSS of PIC	30	11-23-10	5-23-13			
F000	LSS of Comm	30	11-23-10	5-23-13			
G000	LSS of Phou	30	11-23-10	5-23-13			
H000	Rel's Loss of Good Time	12M					

PAGE 2 OF 2

11/17/10
DCP004

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES PAGE 2
SUPERINTENDENT HEARING DISPOSITION RENDERED

10-2433 C/W 2434
TAPE NUMBER

SING SING GN

LOCATION: HS-D2-E01

DIN: 97A0331 NAME: SAMUELS, KENNETH

INCIDENT DATE & TIME: 11/16/10 07:20 PM

TIER 3

REVIEW DATE: 11/17/10

BY: LT MCMORROW

DELIVERY DATE & TIME: 11/17/10 08:00 AM BY: CO R.L. ORTIZ

HEARING START DATE & TIME: 11/21/10 1:25 PM BY: Capt. [Signature]

HEARING END DATE & TIME: 11/23/10 4:21 PM BY: Capt. [Signature]

WAS THERE NEED FOR A FORMAL MENTAL HEALTH/INTELLECTUAL CAPACITY ASSESSMENT? Y / ☒
DOES THIS MISCONDUCT MEET THE CRITERIA FOR WORKPLACE VIOLENCE? Y / ☒

CHARGE NUMBER	DESCRIPTION OF CHARGES	REPORTED BY	DISPOSITION
104.13	CREATING A DISTURBANCE		Not guilty
100.11	ASSAULT ON STAFF		Guilty
107.10	INTERFERENCE WITH EMPLOYEE		Guilty
106.10	REFUSING DIRECT ORDER		Guilty

Tier II/III Review

I have reviewed this hearing and find that it complies with Chapter V Title 7 of N.Y.C.R.R.

Signature / Date

ANY GUILTY DISPOSITION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF FIVE(\$5.00) DOLLARS BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE.

PENALTY CODE	DESCRIPTION	PENALTY MO DAYS	START DATE	RELEASE DATE	SUSPEND MO DAYS	DEFERRED RESTITUTION MO DAYS	****
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11/17/10

DCP004

SUPERINTENDENT HEARING DISPOSITION RENDERED

DIN: 97A0331 NAME: SAMUELS, KENNETH

HEARING DATE: 11/21/10

A. STATEMENT OF EVIDENCE RELIED UPON:

I Found the written reports by Officers Bellingor and Woody to be credible. Officer Gould testified that he saw this inmate turn and swing at the officers. Inmate NJI 07A 0452 testified that he saw a struggle on the gallery and he saw the officer swing their sticks. Inmate CLEMON P 93A2420 stated that he was locked in the shop sink and he heard a struggle on the gallery. Co. Bellingor stated that the inmate swung and struck him in his face.

B. REASONS FOR DISPOSITION:

This was a violent unprovoked attack on Officer Bellingor and it continued until the other officer responded. It's extremely important that inmates confined to a maximum security facility such as this follow staff direction. The seriousness of this case warrants this disposition. This type of violence will not be tolerated and this will serve as a reminder to you that you must follow staff direction and it should also encourage you to improve your behavior.

C. SPECIAL INSTRUCTION ON VISITATION OR CORRESPONDENCE RESTRICTIONS, REFERRALS

OR SPECIAL EVENT LOSS:

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION DATED: 11-23-10

HEARING OFFICER SIGNATURE

INMATE SIGNATURE

DATE & TIME RECEIVED

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

☒ FOR TIER II HEARINGS-APPEAL TO SUPERINTENDENT WITHIN 72 HOURS.

☐ FOR TIER III HEARINGS-APPEAL TO COMMISSIONER WITHIN 30 DAYS.

SUCCESSFUL PRINT COMPLETION

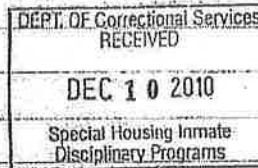
Exhibit I

Kenneth Samuels
354 Hunter Street
Ossining N.Y. 10562

Dec. 7. 2010

Albert E. Prack

Director of Special Housing D.O.C.S
State of N.Y., State Office Building
1220 Washington Avenue
Albany New York 12226.



Dear Mr. Prack:

I am writing you requesting an extension of time to file my Appeal. I am currently being housed at Sing Sing Correctional facility SHU and am on the draft to be transferred to another facility.

I along with the assistance of a law library clerk have been putting together my appeal. The fact that I am now being placed on the draft will not allow me to submit my appeal in a timely manner and request this additional so I may file my appeal.

I pray that my request for an extension of time to file my appeal will be granted. Thank you for your time and consideration in this matter.

Respectfully,

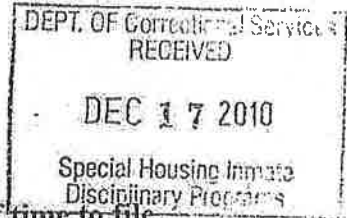
Kenneth Samuels

CC/FILE:

Kenneth Samuels, #97-A-0331
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562

December 8, 2010.

Albert E. Prack
New York State DOCS
1220 Washington Avenue
Albany, New York 12226



RE: Request for an Extension of time to file
My Tier III Appeal, Tape #10-2433 &
2434.

Dear Mr. Prack:

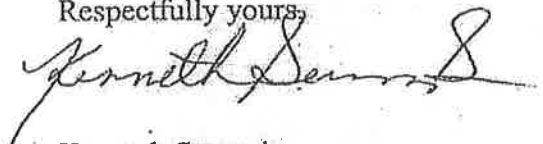
Please accept this letter as a formal request for an extension of time to file my Tier III appeal relating to the above reference matter. The grounds for my request are due to the facts that Law Library clerks are assigned to assist inmates on first come first serve basis. Thereby, I must wait until my turn comes up for assistance. In addition, due to the large number of keep-lock and SHU confinement in this facility in the recent week, which includes three Law Library clerks, the Law Library clerks are under staff and over loaded with assignment, which also include criminal appeal to the court.

Further, at the present time I am being transferred to another facility and my papers and material relating to this matter are in the possession of a Law Library clerk, who will have to forward them to me at the next facility when he concludes my appeal.

Wherefore, the above mentioned reasons, I respectfully from you to grant my request for an extension so that the Law Library clerk may perfect my appeal.

Thank you very much for your time and consideration on this matter and I look forward to hear from you shortly.

Respectfully yours,



Kenneth Samuels



BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS-BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

12/10

LUCIEN J. LECLAIRE, JR.
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

December 15, 2010

Mr. Kenneth Samuels
#97-A-0331
Upstate Correctional Facility
309 Bare Hill Road
P.O. Box 2000
Malone, NY 12953

Dear Mr. Samuels:

This is in response to your recent letter requesting additional time to submit supplemental material concerning your Superintendent's Hearing of November 23, 2010, conducted at Sing Sing Correctional Facility.

A review of available records indicates that an appeal has been received and is pending review in accordance with established procedures. However, a review of the hearing will be delayed until you have had an opportunity to supplement your appeal.

You should submit any supplementary materials that you would like us to consider by January 27, 2011, to ensure a timely review of the hearing.

Sincerely,

Albert Prack
Director, Special Housing/
Inmate Disciplinary Programs

AEP/jln

cc: Superintendent Rock, Upstate Correctional Facility

~~Central Files~~

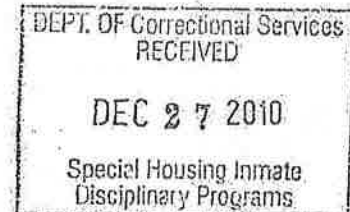
Exhibit J.

Law Library Clerk
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562

Pending
12/10
Ext 1/27

December 21, 2010.

Mr. Albert E. Prack,
Director of Special Housing Unit
New York State Department of
Correctional Services
1220 Washington Avenue
Albany, New York 12226



RE: Kenneth Samuels, #97-A-0331
Tier III Appeal, No. Tape #10-2433 & 2434,
Sing Sing Correctional Facility.

Dear Mr. Prack:

Enclosed please find a copy of Mr. Kenneth Samuels, #97-A-0331 Tier III appeal. One of the clerks at this facility was assigned to assist Mr. Samuels with his appeal. However, Mr. Samuels was transferred to the Upstate Correctional Facility before his assistance was complete. By letter dated December 8, 2010, Mr. Samuels wrote your office requesting an extension of time to file his appeal, before he left this facility, See copy attached.

Copies of this appeal have being simultaneously forward to Mr. Samuels.

Law Library Clerk

cc: Kenneth Samuels,
Upstate Correctional Facility.

Kenneth Samuels, #97-A-0331
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562

December 20, 2010.

Director of Special Housing Unit
New York State Department of
Correctional Services
1220 Washington Avenue
Albany, New York 12226

**RE: Tier III Appeal, No. Tape #10-2433 & 2434,
Sing Sing Correctional Facility.**

Dear Sir/Madam:

Please accept this letter as a formal Tier III appeal relating to a disciplinary hearing determination rendered on November 23, 2010, relating to two misbehavior report, arriving from a single incident. Two misbehavior written were by an unknown person as though the unknown was a witness, but each report were signed individually by C.O. T. Bellinger and C.O. R. Woody, but not the author of the reports.

At the conclusion of the hearing, I was found guilty of violating departmental rules 104.11 (Violent Conduct); 104.13 (Creating A Disturbance); 2 counts of 100.11 (Assault on Staff); 2 counts of 106.10 (Refusing Direct Order); 109.12 (Movement Regulation Violation); and 107.10 (Interference With Employee). The penalty imposed was 30 months in SHU, with 30 months loss of Packages, Commissary, Phone privileges, together with 12 months recommended lost of good time.

The incident in question was sparked after I had return from a counselor call-out, at approximately 7:15 p.m., entered the B-Block Housing unit, took my net bag with my shower

gears out the big plastic bag that's locate at the entrance of the block¹ and proceed to Q-gallery to wait for the bathhouse run, per normal policy and procedure.

While waiting for the next bathhouse run C.O. Bellinger told to return to my gallery. I tried to explain to him that I had just returned from my counselor call-out and was waiting for the next bathhouse run. C.O. Bellinger then told me that I had to return to my cell and wait until they call my gallery. On my way up to my gallery, while talking to another officer, C.O. Woody rudely interrupted the conversation by saying. In response to Wendy's comment I told to mind his business, that no one was talking to him. After being given a hard time from Woody, I return decided to return to my cell and lock in for the rest of the day.

However, on my way back to my cell I was followed by C.O. Bellinger and Woody. Who upon arriving at the front of my cell and while waiting for the gallery office to open the cell door, I was assaulted from behind by C.O. Bellinger and Woody with their fist and nightsticks for no justifiable reason. A struggled ensued, response team arrived, I was handcuffed and escorted to the hospital, to tend injuries and several cuts to the top of my head and body and stop the active bleeding.

At the hearing, after pleading not guilty to all the charges, I informed the hearing officer that I needed an assistant in order to interview several witnesses, acquire documents and information so that I may prepare my defense. That I was intimidated and discouraged from selecting an assistant by the sergeant and Lieutenant who accompany the officer that served me with the misbehavior report.

In response to my request, the hearing officer stated; who is going to find your witnesses! Not me! I'm not going to do any running around for you. You had your chance to have an assistance do it for you, but you refused. However, after a discussion of the record the hearing officer assigned an assistant, who refuse to interview any of my potential witnesses and acquire documents for me. My assistant simply gave the list of names of potential witnesses to the

¹ Per B-Block policy, all inmate going to an evening call-out or to school, must leave their net bags containing their shower gears in a big plastic bag at the entrance of the block, and pick them up upon return, proceed to Q-gallery and wait for the next bathhouse run. The purpose of that proceeding is to prevent all of the returning school and call-out inmates from going upstairs to all 10 galleries at the same time and avoid delay, confusion, and opening all 680 cells on the 10 galleries at the same time for security reasons. For, in order to open one cell in a gallery, one must pull the break, which opens every cell in that gallery.

Hearing Officer, who then called my witnesses to the hearing at the spur of the moment over my objections.

Further, throughout the hearing, each time the hearing officer read the misbehavior reports he would read the facts relating to the officers action in a passive manner. However, when he read to the portion of the misbehavior report that refers to my alleged actions, the hearing officers he would raise the tone of his voice great anger and disgust.

Additionally, while taking the testimony of the of the officers, the Hearing Officer would fraternize with the officers. Asking them how where they doing, wishing them happy holidays, talk with them in a kind and friendly manner. He also would lead the answer to their testimony and would let them answer the question without interrupting their answer.

On the contrary, he would speak hashed and cruel to my witnesses, interrupt them in the middle of answering question, which precluded them from providing the answer to the questions and dismissed the witnesses before I finish asking them questions.

GROUND ONE FOR APPEAL

The Hearing Officer determination should be reversed and dismissed, upon the ground that the two Misbehavior Report were defective and written in violation of departmental directive #4932.

"The misbehavior report *shall*² be made by the employee who has observed the incident or who has ascertained the facts of the incident. Where more than one employee has personal knowledge of the facts, each employee *shall* make a separate report or, where appropriate, each employee *shall* endorse his/her name on a report made by one of the employees." See departmental directive #4932, at §251-3.1(b).

In the present case, both misbehavior reports were written completely by an unknown person who did not signed nor endorse any of the two-misbehavior reports. The unknown author

²Pursuant to the BLACK'S LAW DICTIONARY (Sixth Edition) the word SHALL means the following: "As used in statutes, contracts, or the like this word is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. The word in ordinary usage means "must" and is inconsistent with a concept of discretion."

of both reports went as far as to print the names of C.O. Woody and Bellinger on the bottom of the reports. But nowhere on any the reports did the unknown officer printed or signed his/her name, nor stated the he/her was a witness to the incident, in complete violation of Departmental Directive #4932, §251-3.1(b).

Although C.O. Woody and Bellinger signed one report each, their cursive handwriting were completely and noticeably different from the cursive handwriting on the body and subsections of the two misbehavior reports. When I objected to both misbehavior reports upon the grounds that they were both written by an unknown person, and not by C.O. Woody, Bellinger or person that had witnessed the incident, the Hearing Officer did not deny the my claims. But rather, in a loud, antagonistic and aggressive voice told me so what, is there anything illegal about that! No there not! There is nothing illegal about that. There is nothing wrong with that, while interrupting my objections and not allowing me to speak.

It has been well established that an administrative agency is bound by it's own regulations which have the full force and effect of the Law. See *Severino v. Ingraham*, 59 A.D.2d 587 (1977); *Chambers v. Coughlin*, 76 A.D.2d 980 (3rd Dept. 1980). Having been bound by these rules and regulations and violating them DOCS has cause the proceeding complained of within to be nullity. See *Howard v. Coughlin*, 190 A.D.2d 1090 (4th Dept. 1993); *Rollinson v. Scully*, 181 A.D.2d 734 (2nd Dept. 1992).

Departmental Directive #4932, §251-3.1(b), clearly states that the misbehavior report "shall be made by the employee who has observed the incident or who has ascertained the facts of the incident." There is nothing in said directive the permit anyone other then the person who had witness the incident or who has ascertained the facts to write the misbehavior report.

Here, the only witnesses to the incident were Officer Woody and Bellinger and they did not write the report. But assuming arguendo the author of the misbehavior report had witnessed or ascertained the facts of the incident, he/she failed to stated that on the body of the misbehavior reports, and failed to endorse his/her name the reports in violation of Departmental Directive #4932, §251-3.1(b) that states "Where more than one employee has personal knowledge of the facts, each employee *shall* make a separate report or, where appropriate, each employee *shall* endorse his/her name on a report made by one of the employees."

The author of both misbehavior report was not identified, nor did he testified at the hearing, as the hearing officer refused the hear my contention, by his claims that there was nothing illegal about an unknown person writing both report. Thereby, the hearing officer violated my due process right and he failed to follow and comport the hearing by the departments own rules and regulations. See *Vitorelli v. Seaton*, 539 U.S. 535 (1959); *Paul v. United States*, 371 U.S. 245 (1963); *United States ex rel. Checkman v. Laird*, 469 F.2d 773 (2nd Cir. 1972); *Giampetzzi v. Malcom*, 406 F.Supp. 836 (S.D.N.Y. 1975).

GROUND TWO FOR APPEAL

The hearing Officer denied my due process right to a fair and impartial hearing officer, when he arbitrarily and capriciously refused to evaluate and except my claim of self-defense and had pre-determined my guilt before I presented my defense.

The law of self-defense or justification, as it is called in the state of New York, is also applicable to inmates. For example in *McCann v. Coughlin*, 698 F.2d 112 (2nd Cir, 1983), the court of Appeals for the Second Circuit reversed the District Court decision relating to an incident that involved an altercation between inmate McCann and Tarrats. According to McCann, Tarrats lunged at him with a knife, and McCann responded by reaching for a chair, and hitting Tarrats over the head with it. When the fight was over, Tarrats was taken to the hospital, and McCann was taken and lock-up in Special Housing Unit. And later received a misbehavior report. At his disciplinary hearing the adjustment committee would not allow McCann to assert his claim of self-defense. The Court of Appeals was "left with the definite and firm conviction that a mistake has been committed," citing *United States v. United States Gypsum Co.*, 68 S.Ct. 525, 541 (1948).

At the hearing, it was not disputed that I punched C.O. Bellinger on his face. However, it was my defense that I swung at C.O. Bellinger and hit him while I was trying to get away from him and C.O. Woody after they initiated an unprovoked assault on me, and that they continued to beat me up by striking several times their nightsticks over the top of my head back. As noted on the misbehavior report signed by C.O. Woody, who claimed that after I took a fighting stand, punched him twice on his face, he attempted to strike me with his nightstick on my "shoulder and back area", but struck my "head area approximately 3 times." Which medical records shows that I obtain several lacerations as large as an 1 1/2" x 1/2".

However, it was evident from the very begging of the hearing that the Hearing Officer was not going to evaluate my claim of self-defense and that he had pre-determined my guilt before listening to my defense. As the record clearly reflect that while reading the two misbehavior reports, the Hearing Officer, each time he came to a part that referred to my assault on C.O. Bellinger, the Hearing Officer would aggressively raised his voice in anger and read the assault with great emphasis. However, when he got to the part where the officers describe their assault on my head and body with their nightsticks, the Hearing Officer would lower his voice and read the section in a low tone of voice and humbleness.

Further, the Hearing Officer went on to demonstrate his predetermination of my guilt before listening to my defense. When he called C.O. Bellinger to testify and the first thing that he told Bellinger great emphasis and in a mean tone of voice was "You where called here as witness to the incident that took place you where *viciously assaulted* by Samuels." There was nothing in the misbehavior reports stating the I *viciously assaulted* Bellinger. Thereby, the hearing officer was expressing his own personal opinion, feelings, and emotions to an incident that he was not a witness, and was supposed to have been and impartial and fair hearing officer.

After only allowing me to ask a few questions to C.O. Bellinger, the Hearing Officer cut me off and went on to asked his own questions. Like "Did you provoke this inmate? Because he is saying that he was defending himself. Thereby, telling Bellinger my the substance of defense to margin his answers against my defense.

Courts have indicated the evidence of justification or mitigating circumstances are relevant in disciplinary hearing (see *Matters of Martin v. Coughlin*, 458 NYS2d 257 (1982); *Santana v. Coughlin*, 457 NYS2d 944 (AD 1982). In *Demauro v. Lefevre*, 458 NYS2d 749 (AD 1983), the court directed all reference to the proceeding be expunged from their files, where petitioner and another inmate were involved in an altercation involving another inmate, and petitioner did not deny his involvement in the altercation, and in fact, admitted to several of the disciplinary charges brought against him. However, petitioner did attempt to demonstrate a defense of justification to certain mitigating circumstances.

In *Marquez v. Mann*, 600 NYS2d 285 (AD 3 Dept. 1993), where petitioner an inmate the Shawangunk Correctional facility claimed that his alleged misconduct of throwing hot water and "striking officers with his fists" was justified in self-defense against a reasonable anticipated

criminal assaulted behavior against him. The court directed determination of the tier III hearing and all reference from the proceeding expunged from petitioner's departmental and institutional files.

In the present case, just like in like in *Marquez v. Mann*, supra, it can not be disputed that my actions against were justified, as per the misbehavior report signed by C.O. Woody, it would be impossible for him to attempt to strike me on my back and shoulder when his clearly claimed in his report that I "took up a fighting stance and struck me 2 times with closed (left) fist to my left facial area. How can I punch him on the left side of his face with my left Fist? And how did He attempt to strike my *back and should* while I allegedly punched him two times on his face. It makes no sense.

Thereby, just like in like in *Marquez v. Mann*, supra, the guilty determination of this tier III hearing and all reference from the proceeding should be expunged from all of my departmental and institutional files.

GROUND THREE FOR APPEAL

The Hearing Officer deprived me of my state and federal due process rights to a fair and impartial hearing officer, when he denied my rights to present testimonial, documentary evidence and call witnesses by proceeding with the hearing before my assistant had provided me the documents and information requested, in violation of Departmental Directive #4932..

Pursuant to Departmental Directive #4932, §251-4.2 "The assistant's role is to speak with the inmate charged, to explain the charges to the inmate, interview witnesses and to report the results of his efforts to the inmate. He may assist the inmate in obtaining documentary evidence or written statements which may be necessary. The assistant may be required by the hearing officer to be present at the disciplinary of superintendent's hearing.

Further, pursuant to Departmental Directive #4932 §254.5(a) an "inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals. If permission to call a witness is denied, the hearing officer shall give the inmate a written statement stating the reason for the denial, including the specific threat to institutional safety or correctional goals presented."

In the present case, it was my contentions at the beginning of the hearing that I was threaten and discouraged from requesting a tier hearing assistant to assist me in this matter, and that I wanted an assistant in order to go interview all of my potential witnesses, who locked between 22 to 31³ cell of W gallery. Also, to acquire and provide me with copies of all "To: From: Reports", Investigation Reports, Unusual Incident Report, photograph and medical reports of my injuries. The Hearing Officer adjourned the hearing, and re-convened after I had met with my assistant, but not before the assistant returned with the result of his interview of my witnesses, or documents that I requested to prepare my defense.

Although the Hearing Officer took it upon himself to select and call a few of the witnesses that I had requested my assistant to interview, each of those witnesses were either locked inside shower, slop sink, or on the gallery below during the incident, so they were unable observed the incident, only heard it. Thereby, I objected to the calling of said witnesses and requested from the hearing officer to call the other witnesses who locked in the immediate areas where the incident happened. The Hearing Officer immediately arbitrary and capriciously denied without justification and without providing me with the reason for the denial.

It has been clearly establish that prisoners in disciplinary hearing have a constitutional due process right to call witnesses and present documentary evidence in support of his defense, see, Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963. However, if a witness is denied, the hearing officer must express the reason for the denial upon the record and provided said reason in writing to the inmate, as set forth in Title 7 NYCRR §254.5. See also Giano v. Sullivan, 709 F. Supp. 1209.

In Silva v. Barnes, 526 NYS2d 532 (AD 2 Dept. 1998), the court ruled that the hearing officer "impermissibly denied to the petitioner his right to call certain inmates witnesses in violation of their own regulations (See, 7 NYCRR 254.5)(Matter of Barnes v. Laferve, 511 NYS2d 591). As noted in Barnes, where the record does not reflect any reason for the witness' refusal to testify or that any inquiry was made of him as to why he refuse or that the Hearing Officer communicated with the witness to verify his refusal to testify, there has been a denial of the inmate's right to call witnesses as provided in the regulations."

³At the hearing I said 22 all the way to the double bunk cell on W gallery. The double bunk cell is #31.

In the present case, just like in Barnes v. LaFreve, supra, the Hearing Officer did not provide any reason for the denial of my witnesses and/or the requested documents. Although, the documents were provided to me a few days after the hearing, by that time I received them, they were useless.

Wherefore the above mention reasons I respectfully requests that the determination of the H.O. and all penalties related thereto, be reversed, and that all references to the incident and hearing be expunged from all of my records and departmental files, together with what you may deem just and proper.

Respectfully submitted

Kenneth Samuels

Kenneth Samuels, #97-A-0331
Sing Sing Correctional Facility
354 Hunter Street
Ossining, New York 10562

December 8, 2010.

Albert E. Prack
New York State DOCS
1220 Washington Avenue
Albany, New York 12226

**RE: Request for an Extension of time to file
My Tier III Appeal, Tape #10-2433 &
2434.**

Dear Mr. Prack:

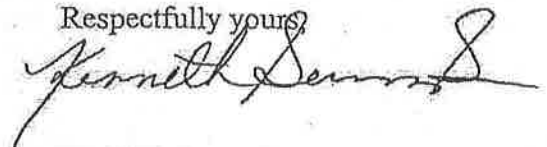
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Further, at the present time I am being transferred to another facility and my papers and material relating to this matter are in the possession of a Law Library clerk, who will have to forward them to me at the next facility when he concludes my appeal.

Wherefore, the above mentioned reasons, I respectfully from you to grant my request for an extension so that the Law Library clerk may perfect my appeal.

Thank you very much for your time and consideration on this matter and I look forward to hear from you shortly.

Respectfully yours,



Kenneth Samuels

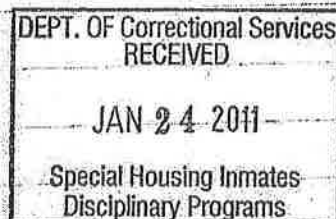
Exhibit
K

Pending
12/10

Kenneth Samuels
P.O. Box 2001
Malone, NY 12933

Albert Prack
Director of Special Housing
New York State Department of
Correctional Services
220 Washington Avenue
Albany New York 12226

January 20, 2011



Re: Tier III Appeal, Tape # 10-2433 - 2434
Sing Sing Correctional Facility

Dear Sir

Please accept this letter as a formal Tier III appeal relating to a disciplinary hearing determination rendered on or about November 23, 2010, relating to two misbehavior report, arriving from a single incident. Two misbehavior reports were written by an unknown person as though the unknown was a witness, but each report were signed individually by C.O. T. Bellinger and C.O. R. Woody, but not the author of the reports.

At the conclusion of the hearing I was found guilty of violating departmental rules 104.11 (Violent conduct); 104.13 (Creating Disturbance); 2 counts of 100.11 (Assault on Staff); 2 count of 106.10 (Refusing Direct Order); 109.12 (Movement Regulation Violation); a Interference with Employee). The penalty imposed was 30 months Loss of Packages, Commissary, together with 12 months recommended lost of.

The incident in question was sparked from a counselor call-out. Upon entering B-P

210
45

took my net bag containing my shower gear out of a plastic bag located at the entrance of the block and proceeded to Q-gallery, wait on line for the bathhouse run. Per normal policy and procedure.

While waiting on line 20 minutes or more, I asked C.O. Woody "What is the holdup" he responded "A-block is running movies". I then asked "I could go back to my cell skipping the bathhouse run and proceed to the yard upon the return of the bathhouse", he responded "No you put down for the bathhouse you have to go to the bathhouse. Ten minutes had past when an announcement was made informing inmates on the bathhouse run to return all cigarettes back to their cells, Bathhouse run going out, along with several other inmates proceeded to our galleries to return my cigarettes to my cell.

Upon returning C.O. Dalton called down to C.O. Bellinger stating "Stop that inmate coming off of R-gallery". C.O. Bellinger informed C.O. Dalton that the inmate had just returned cigarettes back to his cell per the announcement on W-gallery. C.O. Dalton responded stating "I didn't call W-gallery send him back. I explained to C.O. Dalton that I had been on Q-gallery waiting for the bathhouse run prior to the announcement". C.O. Dalton responded "I did not call W-gallery take it back and lock in. I proceeded back to the gallery while complaining to C.O. Bellinger, C.O. Woody stated "You shouldn't have put down for the bathhouse" I responded stating "Mind your fucking business proceeding down R-gallery to return to my cell."

Per B Block policy, all inmates on evening call-outs must leave their net bag containing shower gear in a big plastic bag at the entrance of the block and pick them up upon returning, proceed to Q-gallery and wait for Bathhouse run. The purpose of this policy is to prevent all returning callouts from going upstairs to all 10 galleries at the same time and to avoid delay, confusion, and opening all 680 cells on the 10 galleries at the same time for security reasons. In order to open one cell on a gallery, one must pull the break which opens every cell on the gallery.

and lock in for the rest of the evening

Upon arriving in front of my cell waiting for the gallery officer, I open my cell door when C.O.'s Bellinger, Woody and Dalton came down the gallery and began to push me back the way I'd come. As I began to walk I was punched in the back of the head several times for no reason. I turned around back-pedaling and stated "all that is unnecessary" and received several more unrestrained blows to the face. I attempted to flee and was grabbed by the collar of my shirt by C.O. Woody as they began to pull their night sticks. I attempted to brake as Woody held on my shirt collar but could not. Fearing further assault I attempted to defend myself and was hit with their night sticks with utter disregard or concern. Upon falling to the floor the assault continued until Sgt Barnes ordered them to stop. I was handcuffed and held in the shower for 30 minutes or more and then taken to medical, thereafter hospital to tend to the injuries and several cuts to the top and front of my head to stop the active bleeding.

At the hearing, after pleading not guilty to all charges, I informed the hearing officer that I needed an assistant in order to interview several witnesses, acquire documents and information so that I may prepare my defense. That I was intimidated and discouraged from selecting an assistant by the Sergeant and Lieutenant who accompany the officer that served me with the misbehavior report. In response to my request, the hearing officer stated "who is going to find your witnesses! Not me! I'm not going to do any running around for you. You had your chance to an assistance do it for you, but you refused. However, after a discussion off the record the hearing officer assigned an assistant who failed or refused to interview any of my potential witnesses and acquire documents for me. My assigned assistant simply gave the list of name of potential witnesses to the hearing officer, who call the witnesses to the hearing at the spur of the moment over my objections.

Further, throughout the hearing, each time the hearing officer read the misbehavior reports he would read the facts relating to the officers' action in a passive manner. However, when he read to the portion of the misbehavior report that refers to my alleged actions, the hearing officer would raise his tone of voice with great anger and disgust.

Additionally, while taking the testimony of the officers, the hearing officer would fraternize with the officers, asking them how where they were going, wishing them happy holidays, talk with them in a kind and friendly manner. He also would lead the answer to their testimony and would let them answer the question with interrupting their answer.

On the contrary, he would speak harshed and cruel to my witnesses, interrupt them in the middle of answering questions, which precluded them from providing a full answer to the questions and dismissed the witnesses before I finish asking them questions.

Ground one for Appeal

The hearing officer determination should be reversed and dismissed, upon the ground that the two misbehavior Reports were defective and written in violation of departmental directive # 4932.

"The misbehavior report shall² be made by the employee who has observed the incident or who has ascertained the facts of the incident.

² Pursuant to BLACK'S LAW DICTIONARY (6th Ed) the word SHALL means the following: "As used in statutes, contracts, or the like this word is generally operative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term 'shall' is a word of command, and one which has always, or which must be given a compulsory meaning; as denoting obligation the word in ordinary usage means 'must' and is inconsistent with a concept of discretion."

where more than one employee has personal knowledge of the facts, each employee shall make a separate report or, where appropriate, each employee shall endorse his/her name on a report made by one of the employees." See Departmental Directive # 4932, at Sec. 251-3.1(b).

In the present case, both misbehavior reports were written completely by a unknown person who did not signed nor endorse any of the two misbehavior Reports. The unknown author of both reports went as far as to print the names of C.O. Woody and Bellinger on the bottom of the reports. But nowhere on any the reports did the unknown officer printed or signed his/her name or stated that he/her was a witness to the incident, in complete violation of Departmental Directive # 4932, Sec 251-3.1(b).

Although C.O. Woody and Bellinger signed one report each, their cursive handwriting were completely and noticeably different from the cursive handwriting on the body and subsections of the two misbehavior reports. When I objected to both misbehavior reports upon the grounds that they were both written by an unknown person, and not by C.O. Woody, Bellinger or person that had witnessed the incident, the Hearing officer did not deny the my claims. But rather, in a loud, antagonistic and aggressive voice told me "So what, is there anything illegal about that?" No there not! There is nothing illegal about that. There is nothing wrong with that, while interrupting my objection and not allowing me to speak.

It has been well established that an administrative agency is bound by its own regulations which have the full force and effect of the law. See Severino v. Ingraham, 39 A.D.2d 587 (1977); Chambers v. Coughlin, 76 A.D.2d 980 (3rd Dept. 1980). Having been bound by these rules and regulations and violating them DOC'S has cause the proceeding complained of within to be nullity. See Howard v. Coughlin, 190 A.D.2d 1090 (4th Dept. 1993); Rollinson v. Scully, 181 A.D.2d 734 (2nd Dept 1992).

Departmental Directive # 4932, Sec 251-3.1(b), clearly states that the misbehavior report "shall be made by the employee who has observed

the incident or who has ascertained the facts of the incident." There is nothing in said directive that permits anyone other than the person who had witnessed the incident or who has ascertained the facts to write a misbehavior report.

Here the only witnesses to the incident were Officer Woody and Ellinger and they did not write the report. But assuming, arguendo, the author of the misbehavior report had witnessed or ascertained the facts of the incident, she failed to state that on the body of the misbehavior reports, and failed to endorse his/her name on the reports in violation of Departmental Directive 4932 Section 25(3.1)(b) that states "where more than one employee has personal knowledge of the facts each employee shall make a separate report or, where appropriate, each employee shall endorse his/her name on a report made by one of the employees."

The author of both misbehavior reports was not identified, nor did he testify at the hearing, as the hearing officer refused to hear my contention of his claims that there was nothing illegal about an unknown person writing off reports. Thereby, the hearing officer violated my due process right and failed to follow and comport the hearing by the department's own rules and regulations. See *Vitorelli v Scaton*, 539 U.S. 535 (1999); *Paul v. United States* 11 U.S. 245 (1963); *United States ex rel. Checkman v. Laird*, 469 F.2d 773 (2nd Cir. 1972); *Impetazzi v. Malcom*, 406 F.Supp. 836 (SDNY 1975).

GROUND TWO FOR APPEAL

The hearing officer denied my due process right to a fair and impartial hearing, when he arbitrarily and capriciously refused to evaluate and/or accept my claim of self-defense and had pre-determined my guilt before I presented my defense.

The Law of Self-defense or justification, as it is called in the state of New York, is also applicable to inmates. For example in *McCann v. Coughlin*,

28 F.2d 112 (2nd Cir 1933), the court of Appeals for the Second Circuit reversed the district court's decision relating to an incident that involved an altercation between inmate McCann and Tarrats. According to McCann, Tarrats lunged at him with a knife and McCann responded by reaching for a chair and hitting Tarrats over the head with it. When the fight was over, Tarrats was taken to the hospital, and McCann was taken to Special Housing Unit and later received a misbehavior report. At his disciplinary hearing the adjustment committee would not allow McCann to assert his claim of self-defense. The court of Appeals was "left with the definite and firm conviction that a mistake has been committed," Citing *United States v. United States Gypsum Co.*, 68 S.Ct. 525, 541 (1948).

At the hearing, it was not disputed that C.O. Bellinger was hit on the face. However, it was my defense that I swung in self-defense while trying to get away from them, they initiated an unprovoked assault on me and continued to beat me up by striking me several times with their nightsticks over the top and front of the head. As stated on the misbehavior report signed by C.O. Woody, who claimed that after I took fighting stand, punched him twice on his face, he attempted to strike me with his nightstick on my "shoulder and back area", but struck my "head area approximately 3 times." Which medical records show that I obtain several lacerations as large as $1\frac{1}{2} \times \frac{1}{2}$ ". However, it was evident from the very beginning of the hearing that the hearing officer had pre-determined my guilt before listening to ~~or~~ evaluating my claim of self-defense. In spite of the fact that the hearing ~~officer~~ possessed evidence which shows that both Bellinger and Woody had injuries to their hands. As the record clearly reflect that while reading the two misbehavior reports the hearing officer, each time he came to a part that referred to C.O. Bellinger's injury he would aggressively raise his voice in anger and read the assault with great emphasis. However, when he got to the part where the officers describe their assault on my head with their nightsticks, the hearing officer would lower his voice and read the section in a low tone of voice and humbleness.

³ While C.O. Woody claims to have been punched twice, the only injury complained about was to his left hand. See UI Report pg. 2

Further, the hearing officer went to demonstrate his predetermination of my guilt before listening to my defense. When he called C.D. Bellinger to testify and the first thing that he told Bellinger great emphasis and in a mean tone of voice was "You were called here as witness to the incident that took place where you were viciously assaulted by Samuels." There was nothing in the misbehavior reports stating that I viciously assaulted Bellinger. Thereby the hearing officer was expressing his own personal opinion, feelings and notions to an incident that he was not a witness, and was suppose to have been an impartial and fair hearing officer. *Ponte v. Real* 471 US 491, 495 (1985).

After only allowing me to ask a few questions to C.D. Bellinger, the hearing officer cut me off and went on to ask his own questions. Like "Did you provoke this inmate? Because he is saying that he was defending himself. Thereby, telling Bellinger the substance of my defense to margin his answers against my defense. Court have indicated that evidence of justification or mitigating circumstances are relevant in disciplinary hearing (see *Matter of Martin v. Coughlin*, 58 NY2d 257 (1982); *Santana v. Coughlin*, 457 NY2d 944 (AD 1982)). In *Demore v. Lefevre*, 458 NY2d 749 (AD 1983), the court directed all reference to the proceeding be expunged from their files, where petitioner and another inmate were involved in an altercation involving another inmate, and petitioner did not deny his involvement in the altercation, and in fact, admitted to several of the disciplinary charges brought against him. However, petitioner did attempt to demonstrate a defense of justification to certain mitigating circumstances.

In *Marguez v. Mann*, 600 NY2d 285 (AD 3 Dept 1993), where petitioner an inmate at Shawangunk Correctional Facility claimed that his alleged misconduct of throwing hot water and "striking officers with his fists" was justified in self-defense against a reasonable anticipated criminal assaulted behavior against him, the court directed that the determination of the tier III hearing and all reference from the proceeding expunged from petitioner's departmental and institutional files.

In the case, Just Like in Marquez v. Mann, Supra, it can not be disputed that my actions were justified, as per the misbehavior report signed by C.O. Woody, it would be impossible for him to attempt to strike me on my back and shoulder when he clearly claimed that I "took up a fighting stance and struck me 2 times with a close (left) fist to my left side of facial area." How can I punch him on the left side of his face with my left fist? And How can he attempt to strike my back and shoulder while I'm allegedly in a fighting stance facing him? Moreover, my injuries are consistent with being attacked (assaulted) from the front!

Furthermore, C.O. Bellinger claims that after being struck in the right eye with a left clenched fist. He then attempted to gain control over the inmate by using the body holds. However, C.O. Woody claims that after witnessing C.O. Bellinger being struck in his right eye, it was him who responded to stop the alleged assault by using the body hold. The report signed by C.O. Woody does not mention C.O. Bellinger attempt to apply his bodyhold, nor does ~~the~~ report signed by C.O. Bellinger mention the attempt of C.O. Woody to apply this body hold. Each of these reports are a fabrication of the facts written to cover up their assault against me.³

Thereby, Just like in Marquez v. Mann, Supra, the guilty determination of his tier III hearing and all reference from the proceedings should be expunged from all of my departmental and institutional files.

³ Sergeant Bernes testified at the hearing regarding his own observation stating in part on the night in question while sitting in a chair on Q-gallery in front of the Black ORC. He observed an inmate (later determined to be me) walking at a fast pace down the gallery followed by C.O's. The testimony of Sgt Bernes established that I was not being escorted but pursued.

Ground Three for Appeal

The hearing officer deprived me of my State and Federal due process rights to a fair and impartial hearing officer, when he denied my rights to present testimonial, documentary evidence and call witnesses by proceeding with the hearing before my assistant had provided me the documents and information requested. A violation of Departmental Directive #4932.

Pursuant to departmental directive #4932 Sec. 251-4.2 "The assistant's role is to speak with the inmate charged, to explain the charges to the inmate, interview witnesses and to report the results of his efforts to the inmate. He may assist the inmate in obtaining documentary evidence or written statements which may be necessary. The assistant may be required by the hearing officer to be present at the disciplinary or Superintendent's hearing.

Further, pursuant to departmental directive #4932 Sec. 254.5(a) "inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant and doing so does not jeopardize institutional safety or correctional goals. If permission to call a witness is denied, the hearing officer shall give the inmate a written statement stating the reason for the denial, including the specific threat to institutional safety or correctional goals presented.

In the present case, it was my contentions at the beginning of the hearing that I was threaten and discouraged from requesting a tier hearing assistant to assist me in this matter, and that I wanted an assistant in order to interview all of my potential witness, who locked between 22 to 31st cell on w-gallery. Also to acquire and provide me with copies of all "TO from Reports, Investigation Reports, Unusual Incident

† At the hearing I said 22 all the way to the double bunk cell on w-gallery. The double bunk cell is #31.

reports, Photographs, Medical Reports of my injuries as well as any other medical Reports of any officer claiming injuries as a result of this incident. The hearing officer adjourned the hearing and reconvened after I had met with my assistant, but not before the assistant returned with the results of his interview of my witnesses or the documents I requested to prepare my defense.

An inmate facing disciplinary charges must have an opportunity to marshal facts and prepare a defense. *Patterson v. Coughlin*, 761 F.2d 886, 890 (2d Cir. 1985). In this connection, prison authorities had a constitutional obligation to provide substantive assistance to an inmate in marshaling evidence and presenting a defense. *Eng v. Coughlin*, 858 F.2d 889, 897 (2d Cir. 1988). Moreover, for inmates disabled by confinement in SHU, no assistance must be provided in good faith and in the best interest of the inmate. *Id.* at 898.

Although the hearing officer took it upon himself to select and call few of the witnesses that I had requested my assistant to interview, each of those witnesses were either locked inside the Shower, Slop sink, in the yard during the incident and only heard it or heard about it. Thereby, I objected to the calling of said witnesses and requested from the hearing officer to call the other witnesses who locked in the immediate areas where the incident happened. The hearing officer immediately arbitrary and capriciously denied without justification and without providing me with the reason for the denial.

One inmate testified that he saw me standing in line waiting for the bothhouse run, and later observed three officers beating me with their sticks from the gallery below. Throughout his testimony the hearing officer either interrupted ~~him~~ ^{him} or cut him off while testifying. A second inmate testified that witnessed me throwing cigarettes into my cell ten minutes prior to the assault on me.

It has been clearly established that prisoners in disciplinary hearings have a constitutional due process right to call witnesses and present documentary evidence in support of his defense, see *Wolff v. McDonnell*, 18 U.S. 539, 94 S.Ct. 2963. However, if a witness is denied, the hearing officer must express the reason for the denial upon the record and provide said reason in writing to the inmate, as set forth in Title 28, U.S.C. Sec. 2545. See also *Giano v. Sullivan*, 709 F.Supp 1209.

In *Silva v. Barnes*, 526 N.Y.S2d 532 (AD 2 Dept. 1998), the court ruled that the hearing officer "impermissibly denied to the petitioner his right to call certain inmate witnesses in violation of their own regulations (see, 7 NYCRR 254.5); latter of *Barnes v. LaFerre*, 511 N.Y.S2d 591). As noted in *Barnes*, where the record does not reflect any reason for the witness' refusal to testify or that any inquiry was made of him as to why he refused or that the hearing officer communicated with the witness to verify his refusal to testify, "there has been a denial of the inmate's right to call witnesses as provided in the regulations."

In the present case, just like in *Barnes v. LaFerre*, supra the hearing officer did not provide any reason for the denial of my witnesses and/or the requested documents. Although, the documents were provided to me a few days after the hearing, by the time I received them they were useless. Had my assistance provided me with the documents I would have been able to support my defense and show that the injuries to the officer's hands were consistent with their assault on me, I also would have been able to show the C.O. Woody lied when he claimed that I struck him twice in the face when the only injury he complained of was pain to his hand. See, Unusual Incident Report pg 2-3. The reports were of the utmost importance in presenting my defense.⁶

Clearly a review of the documents I request my assistant to provide with show a number of inconsistencies between them and the Misbehavior Report

In Conclusion

The well recognized due process rights in connection with the prison disciplinary process, New York State has long ago enacted a comprehensive set of regulations under the heading "Procedures for Implementing Standards of Inmate Behavior," 7 NYCRR 250.1-254.9. Among the procedural rights codified in the regulations which are relevant to the instant case are the right to an assistant to interview witnesses and obtain documentary evidence on behalf of the inmate (7 NYCRR 251.4); the right to present documentary evidence and to call witnesses at the disciplinary hearing (7 NYCRR 254.5); and the right to an impartial hearing officer (7 NYCRR 253.1 254.1)

Wherefore, in violation of my due process rights and the above mention reasons I respectfully request that the determination of the hearing and all penalties related thereto, be reversed, and that all references to the incident and hearing be expunged from all of my records and departmental files, together with what you may deem just and proper.

Respectfully Submitted,

Kenneth Samuels
Kenneth Samuels.

Exhibit 2

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

BRIAN FISCHER
COMMISSIONER

LUCIEN J. LECLAIRE, JR.
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: SAMUELS, KENNETH

NO. 97A0331

HEARING FACILITY: SING SING

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT
LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF
NOVEMBER 23, 2010, HAS BEEN REVIEWED AND AFFIRMED ON FEBRUARY 11, 2011.

ALBERT PRACK
DIRECTOR, SPECIAL HOUSING/
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT
CENTRAL OFFICE FILES

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL
HOUSING/INMATE DISCIPLINE PROGRAM.

Exhibit m

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
UNUSUAL INCIDENT REPORTPRINTED AT
10/03/11 09:38 AMSING SING GENERAL FAC CODE 070 FAC LOG# 100200 CCC# 216888
UF LOG# 100072

INCIDENT DATE 11/16/10 TIME 07:20 PM LOCATION GALLERY OB WS

TELEPHONE DATE 11/16/10 TIME 10:21 PM

PERSON CALLING LT [REDACTED] PINKER
PERSON RECEIVING CAPT [REDACTED] HOPKINS

REPORT DATE 11/17/10 PERSON REPORTING LT [REDACTED] WERLAU

USE OF FORCE YES WEAPON USED YES WORKPLACE VIOLENCE YES

ASSAULT (02) 03 DISRUPTIVE BEHAVIOR (05) 01
ON STAFF - SECURITY REFUSED INSTRUCTIONSTAFF USE OF WEAPONS (20) 05
BATON

DESCRIPTION:

UPON RETURNING FROM A CALL OUT INMATE SAMUELS 97A0331 B-W-20 WAS ORDERED BY C.O.'S BELLINGER AND WOODY TO LOCK INTO HIS CELL. INMATE SAMUELS WALKED TOWARDS HIS CELL, THEN TURNED AND STRUCK C.O. BELLINGER IN THE RIGHT EYE WITH HIS CLOSED LEFT FIST. C.O. BELLINGER ATTEMPTED TO USE BODY HOLDS ON THE INMATE BUT WAS UNSUCCESSFUL IN RESTRAINING HIM. THE INMATE CONTINUED TO STRUGGLE THEN STRUCK C.O. WOODY TWO TIMES IN THE FACE WITH HIS CLOSED LEFT FIST. C.O. WOODY DREW HIS BATON AND ATTEMPTED TO STRIKE THE INMATE IN THE SHOULDER/BACK AREA. DURING THE STRUGGLE C.O. WOODY INADVERTENTLY STRUCK THE INMATE IN THE HEAD AREA ONCE WITH THE BATON WITHOUT ANY APPARENT EFFECT. AS THE INMATE CONTINUED TO STRUGGLE WITH C.O. BELLINGER, C.O. WOODY STRUCK THE INMATE TWO MORE TIMES WITH HIS BATON INTENDING TO STRIKE HIM IN THE SHOULDER/BACK BUT INADVERTENTLY STRIKING HIM IN THE HEAD AREA. C.O. WOODY THEN SECURED THE INMATE USING A BEAR HUG HOLD AND FORCED HIM TO THE FLOOR. C.O. WOODY THEN FORCED BOTH THE INMATES HANDS BEHIND HIS BACK ONE AT A TIME AND APPLIED MECHANICAL RESTRAINTS.

SGT. BARNES ORDERED STAFF TO REPORT TO MEDICAL AND THE INMATE BE ESCORTED TO THE INFIRMARY. SGT. BARNES RESPONDED AND ORDERED B-W-20 BE SEARCHED.

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
UNUSUAL INCIDENT REPORTPRINTED AT
10/03/11 09:38 AMSING SING GENERAL FAC CODE 070 FAC LOG# 100200 CCC# 216888
UF LOG# 100072

INCIDENT DATE 11/16/10 TIME 07:20 PM LOCATION GALLERY OB WS

USE OF FORCE YES WEAPON USED YES WORKPLACE VIOLENCE YES

EVENTS CAUSING:

INMATE SAMUELS 97A0331 ASSAULTED OFFICERS BELLINGER AND WOODY BY STRIKING THEM WITH HIS CLOSED LEFT FIST.

ACTION TAKEN:

C.O. BELLINGER WAS OBSERVED TO HAVE BRUISING TO THE RIGHT EYE, SWELLING TO THE NOSE, 1/8" LACERATION TO RIGHT EYE LID, 1/4" LACERATION TO THE RIGHT EYE LID, SWELLING TO THE RIGHT MIDDLE FINGER AND LEFT HAND THUMB. C.O. WOODY HAD NO NOTABLE INJURY BUT COMPLAINED OF LEFT HAND PAIN. BOTH C.O.'S TRANSPORTED BY FACILITY VEHICLE TO PHELPS HOSPITAL. INMATE SAMUELS WAS OBSERVED TO HAVE ONE 1 1/2" X 1/2" LACERATION TO THE TOP HEAD, ONE 1/2" X 1/2" LACERATION TO THE RIGHT SIDE OF HEAD, AND ONE ABRASION 1/8" X 1/8" TO FRONT OF HEAD WITH SWELLING. INMATE WAS TRANS. BY SSCF VEHICLE TO MOUNT VERNON HOSPITAL AND RECEIVED 7 SUTURES TO CLOSE HIS WOUNDS. INMATE SAMUELS WILL BE CONFINED TO SHU 130 PENDING DISCIPLINARY ACTION UPON RETURN. NO DANGEROUS CONTRABAND WAS RECOVERED FROM THE SEARCH OF B-W-20. DIGITAL USE OF FORCE PHOTOS TAKEN ALONG WITH ALL DOCUMENTS FILED. A REQUEST FOR URINALYSIS WAS SUBMITTED. MEDICAL DETERMINED THAT THE INJURIES TO INMATE SAMUELS WERE CONSIDERED MODERATE. BOTH OFFICERS FILED THEIR REPORTS AND WILL NOT BE RETURNING TO DUTY UNTIL FURTHER NOTICE. O.D. D.S.S. KEYSER NOTIFIED.

MEDICAL REPORT:

INMATE SAMUELS 97A0331: HEAD INJURIES - 2 LACERATIONS TO HEAD, #1 - 1 1/2" X 1/2" X 1/8", #2 - AT SIDE OF HEAD 1/2" X 1/2", ABRASION 1/8" X 1/8" WITH SWELLING MID FRONTAL REGION OF HEAD. AREA CLEANSED WITH NORMAL SALINE AND PEROXIDE, PRESSURE DRESSINGS TO CONTROL BLEEDING, BACITRACIN AND HEAD DRESSING ICE PACKS APPLIED. TELEMED, TO OSH.

NUGENT /NURSE
EXAMINER NAME/TITLE11/16/10 08:10 PM
EXAM DATE/TIME

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
UNUSUAL INCIDENT REPORTPRINTED AT
10/03/11 09:38 AMSING SING GENERAL FAC CODE 070 FAC LOG# 100200 CCC# 216888
UF LOG# 100072INCIDENT DATE 11/16/10 TIME 07:20 PM LOCATION GALLERY OB WS
USE OF FORCE YES WEAPON USED YES WORKPLACE VIOLENCE YES

PROPERTY DAMAGE:NOTIFICATION (POLICE/OTHER):

INMATE INFORMATION:

SAMUELS, KENNETH 97A0331 DOB 06/03/1975 ETHNIC - BLACK

<u>GEN INCIDENT</u>	<u>- SPECIFIC INCIDENT</u>	<u>ROLE</u>	<u>WEAPON</u>	<u>FORCE</u>	<u>INJURY</u>
ASSAULT	- ON STAFF-SEC	PERP	BODY USE	BATON	LACERATION
DISRUP BEH	- REFUSED INSTRU	PERP			
STF WEAPONS	- BATON	PERP			

EMPLOYEE INFORMATION:

WOODY, [REDACTED] CO

<u>GEN INCIDENT</u>	<u>- SPECIFIC INCIDENT</u>	<u>FORCE</u>	<u>INJURY</u>	<u>DEGREE</u>
ASSAULT	- ON STAFF-SEC	BATON		
DISRUP BEH	- REFUSED INSTRU			
STF WEAPONS	- BATON			

BELLINGER, [REDACTED] CO

<u>GEN INCIDENT</u>	<u>- SPECIFIC INCIDENT</u>	<u>FORCE</u>	<u>INJURY</u>	<u>DEGREE</u>
ASSAULT	- ON STAFF-SEC	BODY HOLD	LACERATION	MINOR
DISRUP BEH	- REFUSED INSTRU			

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
UNUSUAL INCIDENT REPORTPRINTED AT
10/03/11 09:38 AM

SING SING GENERAL

FAC CODE 070

FAC LOG# 100200

CCC# 216888

UF LOG# 100072

INCIDENT DATE 11/16/10 TIME 07:20 PM LOCATION GALLERY OB WS

USE OF FORCE YES

WEAPON USED YES

WORKPLACE VIOLENCE YES

EMPLOYEE INFORMATION:

BARNES, [REDACTED] SGT

<u>GEN INCIDENT</u>	<u>-</u>	<u>SPECIFIC INCIDENT</u>	<u>FORCE</u>	<u>INJURY</u>	<u>DEGREE</u>
ASSAULT	-	ON STAFF-SEC			
DISRUP BEH	-	REFUSED INSTRU			
STF WEAPONS	-	BATON			

SPT PHILIP HEATH
SUPERINTENDENT11/19/10
DATE

INMATE INJURY REPORT

Facility BSC	Date of injury 11/16/10	Time of injury 7:29 PM CN	Place of injury outside of cell - B8b4
Inmate name Samuel, IC	DIN# 97A0331	Locking location W-20	
What was inmate doing when injured? Walking outside of cell			
Cause of injury?			
Inmate's statement: "I got beat up"			
Witnesses			
Reporting Employee C Banks Jr			Title JF
Inmate's Signature <i>[Signature]</i>			Date 11/16/10

FACILITY HEALTH SERVICES REPORT

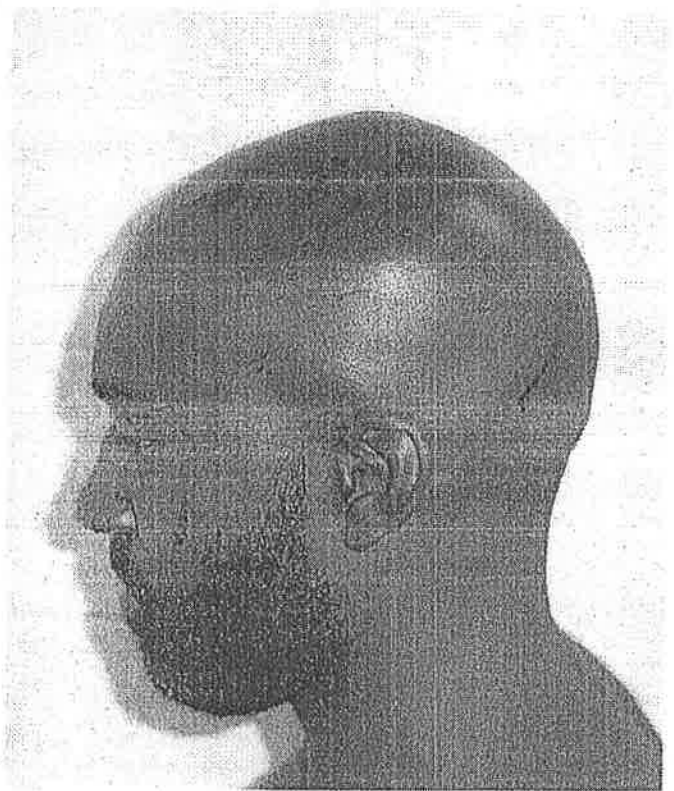
Date injury reported: 11/16/10	Time 7:30 PM CN
Nature of Injury: UOI - Head injuries - 2 lacerations to head (#1) 1 1/2" x 1/2" x 1/8", (#2) at side of head 1/2" x 1/2". Also a 1/2" x 1/2" laceration mid frontal region of head.	
Services Provided: <input checked="" type="checkbox"/> First Aid <input checked="" type="checkbox"/> Medical Treatment Wound cleaned with Normal saline + Permethrin pressure dressing to control bleeding + head dressing. Pains applied. Tetanus shot, tetanus +	
Was inmate admitted to facility infirmary? yes <input checked="" type="checkbox"/> no <input type="checkbox"/>	Outside hospital? If yes, where? yes <input type="checkbox"/> no <input type="checkbox"/> <input checked="" type="checkbox"/> Facility Cell-Medical
Name and title of person furnishing treatment at facility: Signature <i>[Signature]</i> Title <i>[Signature]</i>	



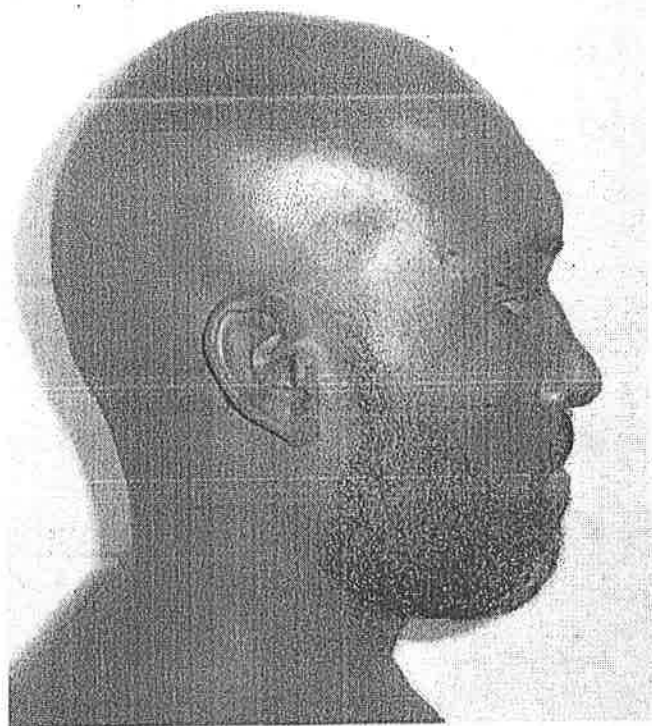
UI#10-0200, UOF#10-0072, 11/16/10 Approx. 7:20pm



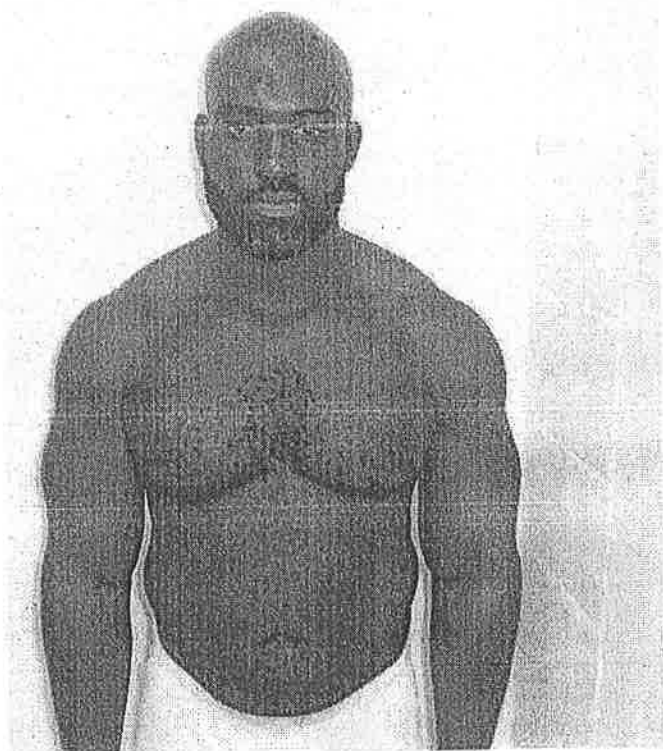
UOF- Inmate Samuels, K #97A0331, HBB-W-20



Photos By: Sgt. M. Barnes

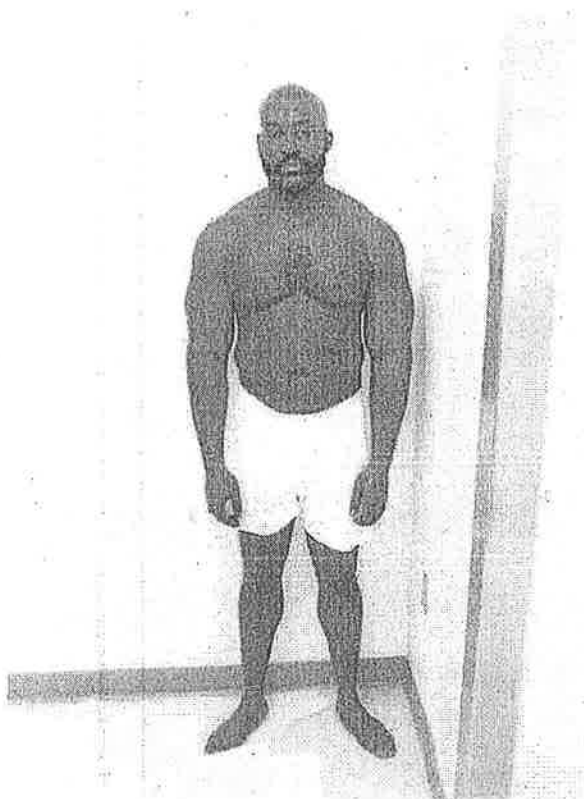


UI#10-0200, UOF#10-0072, 11/16/10 Approx. 7:20pm

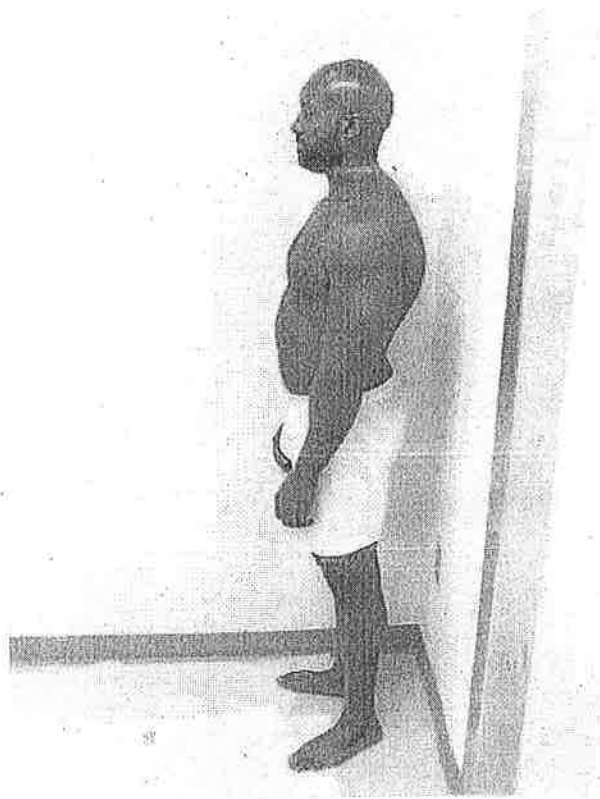


UOF- Inmate Samuels, K #97A0331, HBB-W-20

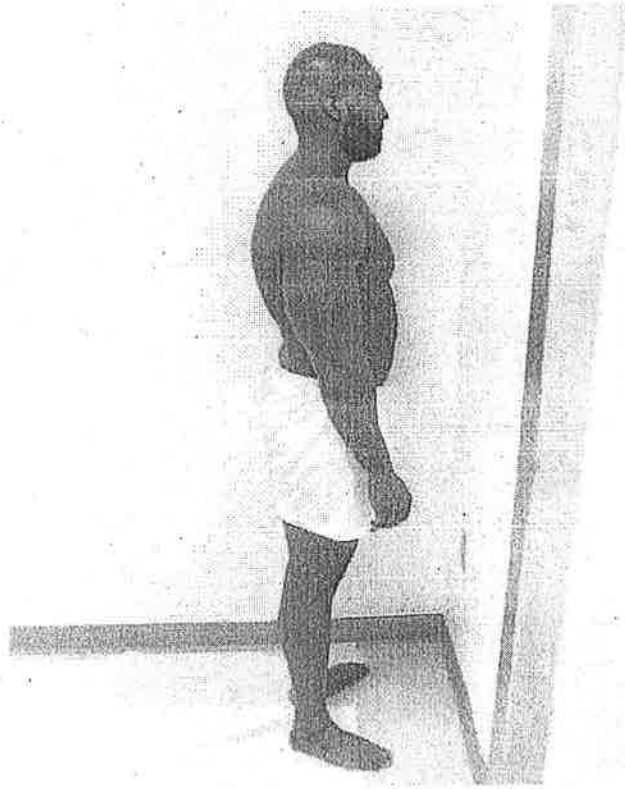
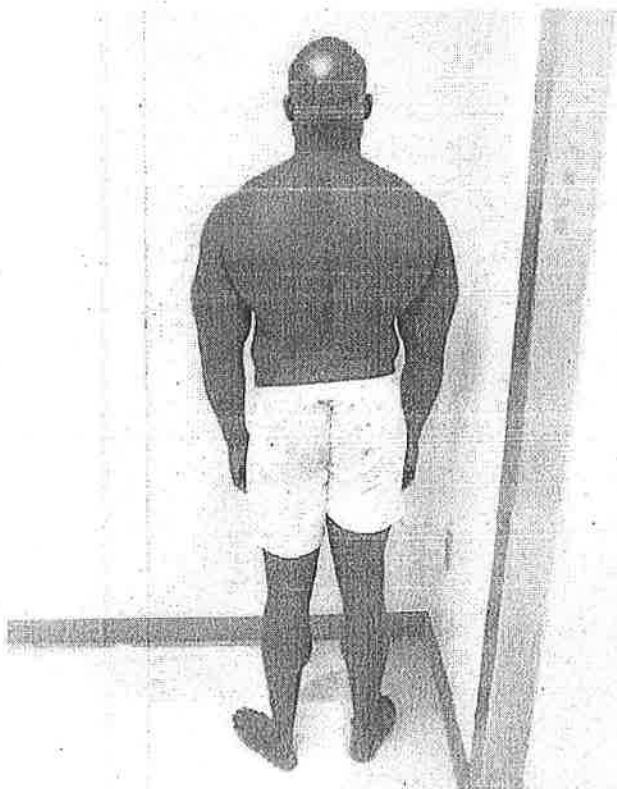
Photos By: Sgt. M. Barnes



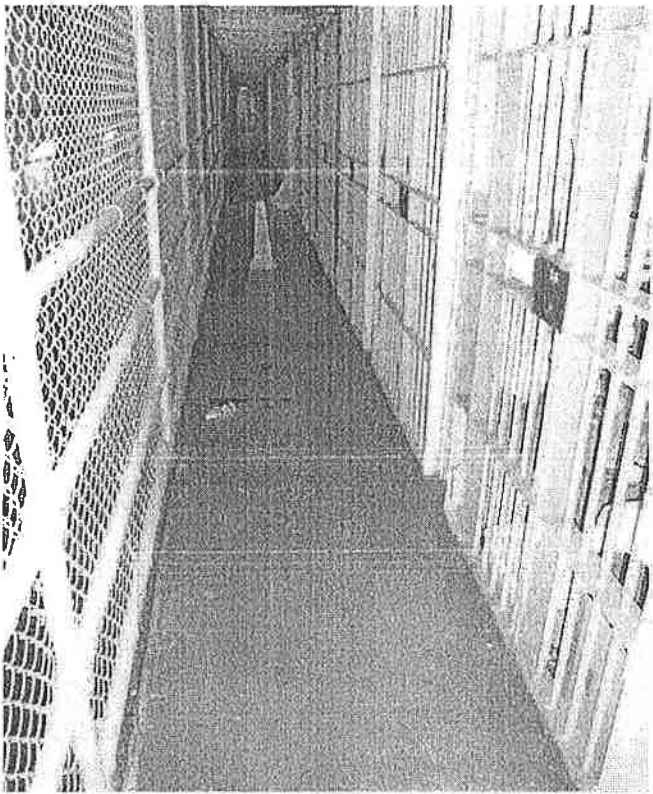
UI#10-0200, UOF#10-0072, 11/16/10 Approx. 7:20pm



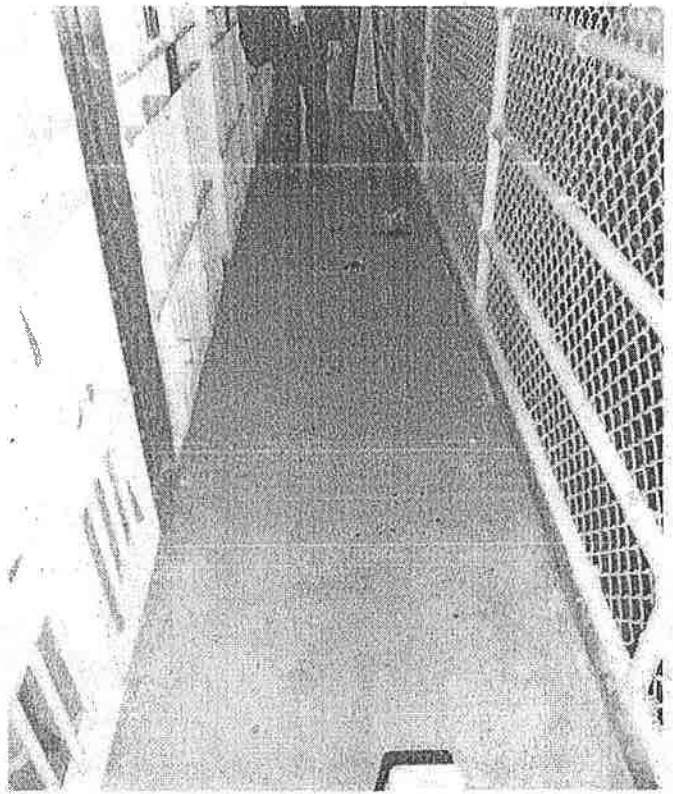
UOF- Inmate Samuels, K #97A0331, HBB-W-20



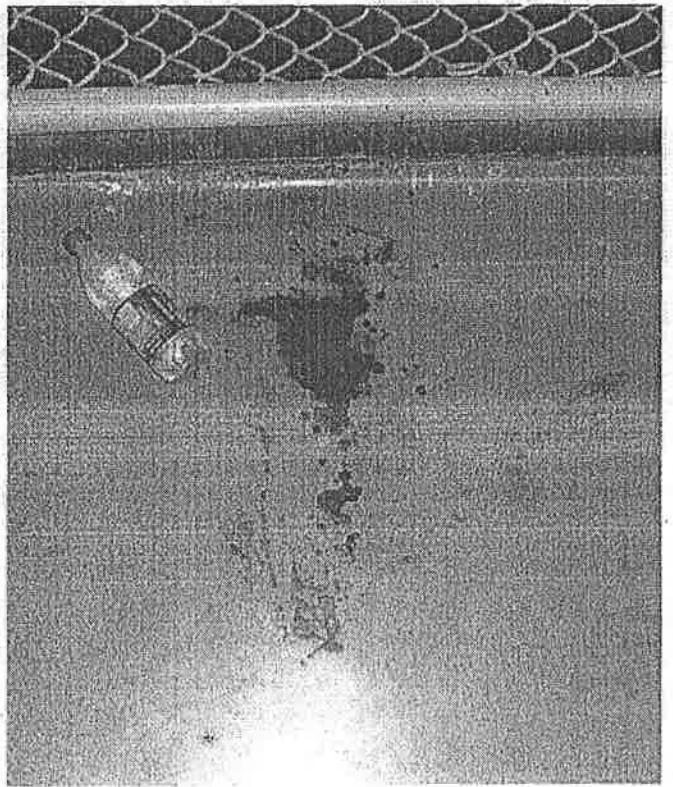
Photos By: Sgt. M. Barnes



UI#10-0200, UOF#10-0072, 11/16/10 Approx. 7:20pm



UOF- Inmate Samuels, K #97A0331, HBB-W-20



Photos By: Sgt. M. Barnes

SUPPORTING DEPOSITION (CPL § 100.20) NEW YORK STATE POLICE

STATE OF NEW YORK
JUSTICE COURT

COUNTY OF WESTCHESTER
VILLAGE OF
OSSINING

THE PEOPLE OF THE STATE OF NEW YORK

• VS-

SUPPORTING DEPOSITION

INMATE (S)

Samuels, Kenneth
97A0331

(DEFENDANT(S))

STATE OF NEW YORK
COUNTY OF WESTCHESTER
VILLAGE OF OSSINING

On (date) 11/16/10 at (Time) 9:00 p.m. I, Woody, Ronald Jr.

(D.O.B.) 1-13-71 354 Hunter Street Ossining, New York

State the Following: I am currently employed by the New York State Department of Corrections. I am assigned as a
at Sing Sing Correctional Facility on (Date) 11/16/10

Correction Officer

Upon returning from a call out inmate Samuels, K 97A0331 HBB W-20 was ordered to lock in his assigned cell by Officer Bellinger. Inmate Samuels walked towards his cell then turned and struck Officer Bellinger in the right eye with a closed clenched left fist. Officer Bellinger attempted to use body holds on inmate Samuels but was unsuccessful in restraining this inmate. Several direct orders were given for inmate Samuels to stop resisting. The inmate refused to comply and continued to struggle. This inmate then struck me two times in the facial area with his closed clenched left fist. I defended myself by drawing my baton and attempted to strike the inmate in the shoulder/back area. During the struggle I inadvertently struck the inmate in the head area once with no effect on the inmate. The inmate continued to struggle with Officer Bellinger. I struck the inmate two additional with my baton intending to strike him on the shoulder/back area. I inadvertently struck him in the head area. I then secured the inmate using a bear hug type body hold and applied mechanical restraints to this struggling inmate. Due to my injuries I was sent and treated for left a left hand injury at Phelps Hospital Emergency Room.

Notice

(Penal Law § 210.45)

In a written instrument, any person who knowing makes a false statement which such person does not believe to be true has committed a crime under the laws of the State of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

This 16th day of November, 2010
OR

x *R. Woody Jr.*
(Signature of Deponent)

(Subscribed and sworn to before me)

This day of , 2010

(witness)

(Name of person taking Deposition)

Time Ended:

9:10 p.m.

SUPPORTING DEPOSITION (CPL § 100.20) NEW YORK STATE POLICE

STATE OF NEW YORK
JUSTICE COURT

COUNTY OF WESTCHESTER
VILLAGE OF
OSSINING

THE PEOPLE OF THE STATE OF NEW YORK

• VS-

SUPPORTING DEPOSITION

INMATE (S)

Samuels, Kenneth
97A0331

(DEFENDANT(S))

STATE OF NEW YORK
COUNTY OF WESTCHESTER
VILLAGE OF OSSINING

On (date)

11/16/10

at

(Time)

(started)

9:30 p.m.

I,

Bellinger, Timothy

(D.O.B.) 6/4/60

354 Hunter Street

Ossining,

New York

State the Following: I am currently employed by the New York State Department of Corrections. I am assigned as a
at Sing Sing Correctional Facility on (Date) 11/16/10

Correction Officer

Upon returning from a call out inmate Samuels, K 97A0331 HBB W-20 was ordered to return to his cell and lock in. Inmate Samuels walked towards his assigned cell. While en route this inmate stopped, turned around to face me, took up a fighting stance, and struck me in the right eye with a left closed clenched fist. I attempted to use a body hold on inmate Samuels but was unsuccessful in restraining this inmate. Several direct orders were given for this inmate to stop resisting. This inmate did not comply and continued to resist and struggle. With the help from responding security staff compliance was finally gained. Due to this incident I received bruising and swelling to my right eye. I received one laceration to my right eye lid measuring 1/8 inch and another measuring 1/4 inch. I also received swelling to my right middle finger and left hand thumb. I was sent out for further evaluation and necessary treatment to Phelps Hospital emergency room.

Notice

(Penal Law § 210.45)

In a written instrument, any person who knowing makes a false statement which such person does not believe to be true has committed a crime under the laws of the State of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

This 16th day of November, 2010
OR

X *T. Bellinger*
(Signature of Deponent)

(Subscribed and sworn to before me)

(witness)

This _____ day of _____, 2010

(Name of person taking Deposition)

Time Ended:

9:40 p.m.

5/10/10

Sing-Sing

Correctional Facility

INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre) Samuels, K		NO. ♦ NUM. 97A0331	HOUSING LOCATION ♦ CELDA HBB W20
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE HBB: W Gallery South		INCIDENT DATE ♦ FECHA 11-16-10	INCIDENT TIME ♦ HORA Approx. 7 ²⁰ pm
3. RULE VIOLATION(S) ♦ VIOLACIONES 100.11 inmate shall not assault staff 104.11 inmate shall not engage in violent conduct 104.13 inmate shall not engage conduct causing disturbance in facility 106.10 disobey direct order 109.10 inmate shall not be out of place 109.12 move			
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCION DEL INCIDENTE On the above date and approximate time I (CO Bellinger) was standing on HBBG - north gallery monitoring the HBB bathhouse unit. I observed inmate Samuels, K 97A0331 returning from counselor call out and ordered him to return to his cell. At this time inmate Samuels responded "for what I'm going to the fucking bathhouse now". I then informed the inmate that his gallery wasn't called yet and gave him a second order to lock in until his gallery was called. The inmate became irate and stated "fuck you I'm grown and don't talk to me like that. I gave him a direct order to place his hands in his pockets and proceed to his cell. Inmate Samuels stepped on W South and dropped his net bag turned and struck me in the right eye with a left clenched fist. I then attempted to gain control over the inmate by using body holds but was unsuccessful. I gave additional orders to stop resisting and he refused all orders. Responding staff arrived and control was finally gained.			
REPORT DATE ♦ FECHA 11-16-10	REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME T. Bellinger	SIGNATURE ♦ FIRMA CO. T. Bellinger	TITLE ♦ TITULO CO
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) ♦ SIGNATURES: ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay) FIRMAS 1. _____ 2. _____ 3. _____			

NOTE: Fold back Page 2 on dotted line before completing below.

6. WERE OTHER INMATES INVOLVED? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> IF YES, GIVE NAME & #	
7. AT THE TIME OF THIS INCIDENT, WAS INMATE UNDER PRIOR CONFINEMENT/RESTRICTION? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> OR AS A RESULT OF THIS INCIDENT, WAS INMATE CONFINED/RESTRICTED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
8. WAS INMATE MOVED TO ANOTHER HOUSING UNIT? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> IF YES, (a) CURRENT HOUSING UNIT HBC 130 (b) AUTHORIZED BY C. Pinker Lt. W/C	
9. WAS PHYSICAL FORCE USED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> (IF YES, FILE FORM 2104)	
AREA SUPERVISOR ENDORSEMENT M. Brown Jr	

Sing-Sing Correctional Facility

INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre)	NO. ♦ NÚM.	HOUSING LOCATION ♦ CELDA
Samuel, K	97A0331	HB3W20
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE	INCIDENT DATE ♦ FECHA	INCIDENT TIME ♦ HORA
HB3 W Gallery South	11-16-10	Approx 7:28 pm
3. RULE VIOLATION(S) ♦ VIOLACIÓN/ES		
100.11 Assault 104.11 Violent Conduct 104.13 Disturbance		
106.10 Direct Order 107.10 interference		
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE		
<p>On the above date and approximate time I observed inmate Samuel 97A0331 strike officer Bellinger in his right eye. I responded to stop the assault by using a body hold but was unsuccessful. Inmate Samuel took up a fighting stance and struck me 2 times with a closed (left) fist to my left side of facial area. He was given several direct orders to stop resisting which he refused. Fearing for my safety and to prevent further assault I drew my baton and attempted to strike the inmate on his shoulder and back area inadvertently striking his head area approximately 3 times. I used a body hold and forced this inmate to the ground and applied mechanical restraints to this struggling inmate Area Supervisor notified</p>		
REPORT DATE ♦ FECHA	REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME	SIGNATURE ♦ FIRMA
11-16-10	R. Woody Jr	R. Woody Jr
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any)		TITLE ♦ TÍTULO
ENDOSOS DE OTROS EMPLEADOS TESTIGOS (si hay)		CA
SIGNATURES:		
FIRMAS		
1. _____		
2. _____		
3. _____		

NOTE: Fold back Page 2 on dotted line before completing below.

6. WERE OTHER INMATES INVOLVED?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	IF YES, GIVE NAME & #
7. AT THE TIME OF THIS INCIDENT, WAS INMATE UNDER PRIOR CONFINEMENT/RESTRICTION?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	OR
AS A RESULT OF THIS INCIDENT, WAS INMATE CONFINED/RESTRICTED?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
8. WAS INMATE MOVED TO ANOTHER HOUSING UNIT?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
IF YES, (a) CURRENT HOUSING UNIT	HB3 130	(b) AUTHORIZED BY St Pinker
9. WAS PHYSICAL FORCE USED?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	(IF YES, FILE FORM 2104)
AREA SUPERVISOR ENDORSEMENT		
[Signature]		

FORM #2077 (Rev. 8/01)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
CONTRABAND RECEIPTOriginal - Inmate
Copy - D.S.S.

DATE/TIME	11/16/10 9:40 PM
LOCATION	HSS W 20

Slug Sing CORRECTIONAL FACILITY

OFFICER CONDUCTING SEARCH

SIGNATURE

PRINT NAME

INMATE NAME

DIN

97A0331

☒ NO CONTRABAND FOUND☒ NO PROPERTY DAMAGED DURING SEARCH

COMMENTS

ITEMS CONFISCATED OR DAMAGED

WHERE FOUND

DISPOSITION OF ITEMS LISTED

PERSON RECEIVING ITEMS

SIGNATURE

PRINT NAME

YOU MAY WRITE TO THE DEPUTY SUPERINTENDENT FOR SECURITY WITHIN 7 DAYS
OF THIS RECEIPT REGARDING THE CONFISCATION OR DISPOSITION OF THESE ITEMS.

19:50:46 Tue Nov 16, 2010

11/16/10

*** FPMS INMATE OVERVIEW ***

KINQM15

DIN 97A0331

NAME SAMUELS, KENNETH

NYSID 07477295Z

FBI 751051TA4

SEX MALE

DOB 06/03/1975 ETHNIC NOT HISPANIC RACE BLACK

STATUS IN CUSTODY

NEW COMMIT

ORIG DATE RECV 01/16/1997 CMC NO

CURR FAC SING SING GN CELL 0B-WS-20S

OWN FAC SING SING GN DISCH #

REL

DIS

T/O STATUS NONE

CUSTODIAL

CRIMES TOTAL CRIMES 0001

COMMIT COUNTY

MURDER 2ND

A1

BRONX

AGGREGATE TERM 025 00 00 TO 099 99 99

EARLIEST RELEASE DATE 10/02/2019

PH DATE/TYPE TENT RLSE DT PE DATE

TAC DATE/TYPE

COND REL DT MAX EXP DT

06/2019 INIT

10/02/2019

99/9999

FMAX

NONE

LIFE

WARRANT: FELONY WAR (N) MISDEMEANOR WAR (N) ICE (N) PENDING CHARGES (N)

SENTENCE OTHER AGENCY (N) DEF SENT (N) EXP DATE ()

MOST SERIOUS PRI

NONE

DATE

TYPE OF SENT

TERM

SECURITY CLASS MAX B DATE 03/04/10 OTH SEC CHARS NO EXTENDED CLASS RSNS NO

UNUSUAL INCID YES MOST CURR 08/14/00 TOTAL INCD 001

MED PROB YES

PD PGM L BLOCK

REC LOC

NEXT DIN:

[HTTP://PHOTOS/I.ASPX?D=97A0331](http://PHOTOS/I.ASPX?D=97A0331)

<ENTER> CONTINUE <PF3> EXIT(FUNC) <PF4> RETURN

<CLEAR> EXIT(SYS)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

REQUEST FOR UNINALYSIS TEST

FACILITY: SING SING

TEST: _____

INMATE NAME: Samuels, KennethNUMBER: 97A0331CELL: HBB W-20REQUEST MADE BY: M. Barnes, SgtDATE: 11/16/10

AGENT(S) SUSPECTED (IF ANY)

Full ScanCIRCUMSTANCES LEADING TO REQUEST Inmate Samuels was involved on an assault on staff in HBBTEST APPROVED BY: [Signature]DATE: 11/16/10INMATE TOLD THE UNDERLYING REASON WHY HE IS BEING ORDERED TO SUBMIT A URINE SPECIMEN (CIRCLE ONE: SUSPICION, ROUTINE, RANDOM)

BY: _____

DATE: _____

TIME: _____

HAS INMATE TAKEN MEDICATION RECENTLY (YES OR NO) SPECIFY _____

INMATE ORDERED TO SUBMIT SPECIMEN:

DATE: _____

TIME: _____

SPECIMEN WITNESSED AND OBTAINED BY: _____

DATE: _____

TIME: _____

DOES INMATE WILLFULLY REFUSE TO SUBMIT SPECIMEN? (YES OR NO)

DOES INMATE CLAIM TO BE UNABLE TO SUBMIT SPECIMEN? (YES OR NO) DATE: _____

TIME: _____

IF INMATE CLAIMS TO BE UNABLE TO SUBMIT SPECIMEN, HAS INMATE BEEN GIVEN AT LEAST THREE HOURS TO SUBMIT SPECIMEN (YES OR NO)

SPECIMEN TESTED BY (1ST TEST): _____

DATE: _____

TIME: _____

RESULTS: _____

SPECIMEN TESTED BY (2ND TEST): _____

DATE: _____

TIME: _____

RESULTS: _____

CHAIN OF CUSTODY STARTING WITH STAFF OBTAINING SPECIMEN. ATTACH ADDITIONAL PAGES IF NECESSARY

FROM: _____

TO: _____

DATE: _____

TIME: _____

FROM: _____

TO: _____

DATE: _____

TIME: _____

FROM: _____

TO: _____

DATE: _____

TIME: _____

FROM: _____

TO: _____

DATE: _____

TIME: _____

FROM: _____

TO: _____

DATE: _____

TIME: _____

FROM: _____

TO: _____

DATE: _____

TIME: _____

FROM: _____

TO: _____

DATE: _____

TIME: _____

FROM: _____

TO: _____

DATE: _____

TIME: _____

THIS FORM IS TO BE FILLED OUT COMPLETELY. IT IS TO ACCOMPANY THE SPECIMEN UNTIL THE SPECIMEN IS TESTED. IF THE SPECIMEN IS POSITIVE A MISBEHAVIOR REPORT SHALL BE WRITTEN.

Exhibit N

UNSS71 STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

11/19/10

USE OF FORCE REPORT

13:48:27

SING SING GENERAL

UF LOG NO. 100072.00

INCIDENT DATE 11/16/10 TIME 07:20PM

UI CCC NO. 216888

GEN LOC. 10 GALLERY

SPEC LOC. 0B-WS

CB LOG NO.

INMATE
SAMUELS, KENNETH

DIN
97A0331

ETHNIC
BLK

ROLE
PERP

STAFF INVOLVED

TITLE

FORCE1

FORCE2

FORCE3

DEGREE

WOODY, RONALD JR

CO

BATON

BODY HOLD

MECH RESTR

BELLINGER, TIMOTHY

CO

BODY HOLD

MINOR

DESCRIBE EVENTS LEADING UP TO THE APPLICATION OF FORCE:

INMATE SAMUELS WAS ORDERED TO LOCK IN BY SECURITY STAFF. INMATE WAS WALKED TOWARDS HIS CELL, THEN TURNED AND STRUCK OFFICER BELLINGER IN THE RIGHT EYE WITH HIS CLOSED LEFT FIST. BODY HOLDS WERE UNSUCCESSFUL IN RESTRAINING INMATE. STRUGGLE CONTINUED AND INMATE STRUCK C.O. WOODY TWO TIMES IN THE FACE WITH HIS CLOSED LEFT FIST.

DESCRIBE ACTUAL FORCE USED:

C.O. WOODY DREW HIS BATON AND ATTEMPTED TO STRIKE THE INMATE IN THE SHOULDER/BACK AREA. C.O. WOODY INADVERTENTLY STRUCK THE INMATE IN HEAD AREA ONCE WITH BATON. AS THE INMATE CONTINUED TO STRUGGLE AND RESISTED SEVERAL DIRECT ORDERS TO STOP, OFFICER WOODY STRUCK THE INMATE TWO MORE TIMES WITH BATON INTENDING TO STRIKE HIM IN THE SHOULDER/BACK BUT INADVERTENTLY STRIKING HIM IN THE HEAD AREA. C.O. WOODY SECURED INMATE USING A BEAR HUG HOLD AND FORCED HIM TO THE FLOOR. INMATE'S HANDS FORCED BEHIND AND HE APPLIED MECHANICAL RESTRAINTS.

UNS571 STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES
11/19/10 USE OF FORCE REPORT
13:48:27 SING SING GENERAL UF LOG NO. 100072.00
INCIDENT DATE 11/16/10 TIME 07:20PM UI CCC NO. 216888
GEN LOC. 10 GALLERY SPEC LOC. 0B-WS CB LOG NO.

=====

INMATE	DIN	ETHNIC	ROLE
SAMUELS, KENNETH	97A0331	BLK	PERP

=====

EXAMINERS	NAME	TITLE	EXAM DATE	TIME
NUGENT		NURSE	11/16/10	08:10PM

PART B - PHYSICAL EXAMINATION/TREATMENT REPORT:
2 LACERATIONS TO HEAD, #1 - 1 1/2" X 1/2" X 1/8" DEEP TO TOP OF HEAD, #2 -
1/2" X 1/2". ABRASION TO FRONT OF HEAD 1/8" X 1/8" ALL ACTIVELY BLEEDING.
ALL AREAS CLEANSED WITH NORMAL SALINE AND PEROXIDE. BACITRACIN, PRESSURE
DRESSING APPLIED. ICE PACK APPLIED. TELEMED, TO OSH.

=====

SUPERVISOR REVIEW:

WAS INCIDENT VIDEOTAPED? NO
WERE USE OF FORCE PHOTOS TAKEN? YES PER DIRECTIVE
WERE USE OF FORCE PHOTOS REVIEWED? YES
WAS STAFF MEMBER INJURED? YES
WAS STAFF SEEN BY MEDICAL? YES PER DIRECTIVE
WAS INMATE INJURED? YES
WAS INMATE SEEN BY MEDICAL? YES PER DIRECTIVE
WAS THE UF MEMO COMPLETED? YES
WAS THE INMATE RETURNED TO THE CELL? NO MOVED TO: SHU 130
REPORTED BY: SGT MICHAEL BARNES DATE: 11/16/10
REVIEWED BY: LT CHRISTOPHER PINKER DATE: 11/16/10

=====

REVIEW AND EVALUATION BY SUPERINTENDENT:
BASED ON A REVIEW OF THE INFORMATION PRESENTED APPROPRIATE FORCE WAS USED
TO PREVENT FURTHER INJURY TO STAFF AND TO GAIN CONTROL OF THE SITUATION

=====

SPT PHILIP HEATH
SUPERINTENDENT

Philip V. Heath
11/19/10
DATE

USE OF FORCE REPORT

There are other reports filed under this Use of Force Log #

FACILITY <u>Sing Sing</u>	Incident Date: <u>11/16/10</u>	Facility Use of Force Log # <u>10-072</u>
Incident Location <u>HBB W Gallery South</u>	Incident Time: <u>7:20 P.M.</u>	If Unusual Incident, CCC Log # <u>216888</u>

PART A - REPORT OF INCIDENT

INMATE INVOLVED	Name	DIN	Cell/Cube Location	Role Code*	* 01 Bystander 02 Participant 03 Perpetrator 04 Suspect 05 Victim 06 Witness
<u>Samuels, Kenneth</u>	<u>97A 0331</u>	<u>HBB W-20</u>	<u>03</u>		

STAFF INVOLVED	Name	Soc. Security #	Title
1.	<u>Bellinger, Timothy</u>	<u>O/F</u>	<u>C.O.</u>
2.	<u>Woody, Ronald</u>	<u>O/F</u>	<u>C.O.</u>
3.			
4.			

DESCRIBE EVENTS LEADING UP TO THE APPLICATION OF FORCE

Inmate Samuels was ordered to lock in his assigned cell by security staff. Inmate walked towards cell, turned, and struck C.O. Bellinger in right eye with his closed clenched left fist. Body holds were unsuccessful in restraining this inmate. Struggle continued and inmate struck C.O. Woody two times in his facial area with his left closed, clenched fist.

TYPE OF FORCE USED	<u>05</u> <u>04</u>	01 Baton 02 Body Hold	03 Chemical Agents 04 Mechanical Restraint	05 Use of Firearms 06 Shield	99 Other
--------------------	------------------------	--------------------------	---	---------------------------------	----------

DESCRIBE THE ACTUAL FORCE USED (If chemical agents are used, indicate who authorized use. If inmate is injured, attach photographs.)

C.O. Woody drew his baton and attempted to strike the inmate in the shoulder/back area. C.O. Woody inadvertently struck the inmate in the head area once with baton. As the inmate continued to struggle and resist several direct orders to stop C.O. Woody struck the inmate two more times with baton intending to strike him in the shoulder/back but inadvertently striking him in the head area. C.O. Woody used a bear hug type body hold and forced him to the floor. C.O. Woody used his left hand and took control of his left wrist and forced the same into the small of his back. He then used his right hand and took control of his right wrist and forced the same into the small of his back forcing mechanical restraints to both wrist.

REPORTER - Name M. BarnesSignature M. BarnesTitle Sgt

Dist: Original - Superintendent

Copy - Guidance unit file(s) of inmate(s) involved

USE OF FORCE REPORT (cont'd)

There are NO other
reports filed under this
Use of Force Log #

Facility <u>SSC</u>	Date & Time of Incident <u>11/16/10 8:15 PM</u>	Facility Use of Force Log # <u>10-072</u>
Inmate Name <u>Samuel K</u>	DIN <u>1A0331</u>	If Unusual Incident, CCC Log # <u>216888</u>

Part B - Physical Examination / Treatment Report

Examiner's Name & Title C. NyeDate & Time of Examination 11/16/10 8:15 PM

Medical Report (Indicate date & time of examination, describe extent of any injuries, and describe treatment provided)

2 Lacerations to head #1 - $1\frac{1}{2} \times \frac{1}{2} \times \frac{1}{8}$ " deep to top of head, #2 - $\frac{1}{2} \times \frac{1}{2}$ " abrasion. Abrasion to front of head $\frac{1}{8} \times \frac{1}{8}$ " all actively bleeding. All areas cleaned with normal saline & peroxide. Bruises Pressure dressing applied. Ice pack Applied. Tetanus shot given. Telemed Physician + Dr. Ferdous send to MCH for evaluation & laceration repair.

C. Nye

Examiner's Signature and Date

C. Nye 11/16/10

Part C - Review and Evaluation by Superintendent

Superintendent's Signature and Date

USE OF FORCE REPORT - PART B - ADDENDUM

FACILITY	SSCf	Date & Time of Incident	7:20pm 11/16/10	Facility Use of Force Log #	10-072
INMATE NAME	Samuels, Kenneth	DIN	92A0331	Cell Location	W-20
PHYSICAL EXAMINATION/TREATMENT - DETAIL					
EXAMINER'S NAME AND TITLE	Chugent	Date & Time of Examination	11/16/10	8:10pm	CP

1 = 1 1/2" x 1/2" x 1/8" deep TPA of head
Laceration - actively bleeding

2 - abrasion - 4/8" x 1/8" with swelling mid
front of head

3 - 1/2 x 1/2" laceration RT side of head
Active bleeding

— Chugent 11/16/10

EXAMINER'S SIGNATURE AND DATE

Exhibit O

NEW YORK STATE - DEPARTMENT OF CORRECTIONAL SERVICES
SING SING CORRECTIONAL FACILITY
MEMORANDUM

TO:  Pinker, Lieutenant W/C

FROM:  Barnes, Sergeant

SUBJECT: U.I. # 10-0200

DATE: November 16, 2010

Sir,

On the above date at approximately 7:20 p.m. I responded to a call for assistance on W-gallery south. When I arrived I observed inmate Samuels, K 97A0331 laying on the ground face first in mechanical restraints. I took control over the situation and ordered responding non-involved security staff to escort this inmate to the holding area on Q-gallery. It was reported to me by Officer T. Bellinger that on the above date inmate Samuels was observed returning from the counselor callouts. Officer Bellinger reports inmate Samuels was ordered to return to his locking location after the call out. At this time inmate Samuels responded, "For what I'm going to the fucking bathhouse now". Officer Bellinger responded, "Your gallery was not called yet go back and lock in until the gallery is called". This inmate became disruptive and stated, "fuck you I'm grown you don't have to talk to me like that". Additional orders were given by Officer Bellinger to return to his cell. Officer Bellinger ordered this inmate to place his hands in his pockets and proceed to his locking location. While en route to W-gallery inmate Samuels stopped on W-south, dropped his net bag and turned to face Officer Bellinger. At this time inmate Samuels took up a fighting stance and struck Officer Bellinger on his right eye area with a left closed clenched fist. Officer Bellinger reports he attempted to gain control over this inmate but was unsuccessful. Several orders were given to stop resisting. Inmate Samuels refused all orders. With the help of responding security staff control was gained and the assault stopped.

It was reported to me by Officer R Woody that on the above date he observed inmate Samuels take up a fighting stance and strike Officer Bellinger. Officer Woody reports fearing for the safety of Officer Bellinger he responded and attempted to stop the assault on Officer Bellinger. Officer Woody reports Inmate Samuels struck him twice on the left side of his face with a left closed clenched fist. Officer Woody reports he gave several orders to stop resisting while attempting to gain control over this assaultive inmate. All orders were refused. Fearing for his safety and Officer Bellinger he drew his defensive weapon and attempted to stop the assault by striking this inmate on his right shoulder area with approximately three overhead baton strikes. During the violent

struggle Officer Woody inadvertently struck this inmate on his upper head center area, front upper head area, and back head area. Officer Woody actions caused this inmate to stop his assault on both Officers involved. At this time Officer Woody used a bear hug type body hold and forced this inmate to the ground. Officer Woody used his left hand and took control over this inmates left wrist and forced the same into the small of his back applying mechanical restraints to his left wrist. Additionally Officer Woody used his right hand and took control over his right wrist and forced the same into to small of his back applying mechanical restraints.

Both involved Officers were ordered to report to the infirmary for medical assessment and necessary treatment.

[REDACTED]

Inmate Samuels was escorted by non-involved security staff under the direct supervision of Sgt. C. Gamble to the infirmary for medical assessment and necessary treatment. Per medical this inmate received one laceration on the top of his head measuring 1 ½ inch X ½ inch. Additionally, this inmate received another laceration to the right side of his head measuring ½ inch x ½. Finally, this inmate received one abrasion with swelling to his mid front of his head measuring 1/8 inch x 1/8 inch. Per medical inmate Samuels was transported to Mount Vernon Emergency room for further medical assessment and necessary treatment under the direct supervision of Sgt. Schrader and two transporting Officers. Per Mount Vernon Emergency Room staff inmate Samuel received a laceration on the top of his head that required four sutures to close and a laceration on the side of his head that required 3 sutures to close. Inmate Samuel returned to the facility without incident and will temporarily be housed in the infirmary room #206 E-01 and subsequently will be transferred to HBC cell #130 pending disciplinary review. I attempted to interview inmate Samuel but he refused to make any comments. A urinalysis was submitted with the results pending. A cell search was conducted with no contraband recovered. All other necessary and pertinent paperwork was submitted. Force used was necessary to prevent further assault on the Officers involved and to gain control over this situation.

Respectfully submitted,

M. Barnes
M. Barnes, Sergeant

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

SING-SING CORRECTIONAL FACILITY

MEMORANDUM

TO: [Redacted] Barnes, Sergeant
FROM: [Redacted] Bellinger, Correction Officer
SUBJECT: U.I.#10-0200, U.O.F.# 10-0072
DATE: November 16, 2010

Sir,

On the above date I was standing on HBB-Q- North Gallery monitoring the HBB bathhouse run. I observed inmate Samuels, K. #97A0331 returning from a counselor call out and ordered him to return to his cell. At this time inmate Samuels responded "for what I'm going to the fucking bathhouse now". I then informed the inmate that his gallery was not called yet and gave him a second order to lock in until his gallery was called. The inmate became irate and stated "fuck you I'm a grown man you don't have to talk to me like that". I then gave the inmate a direct order to place his hands in his pocket and proceed to his cell. While en route to his cell inmate Samuels stopped on W-south, dropped his net bag, took up a fighting stance, and struck me in the right eye with a left clenched fist. I then attempted to gain control over the inmate by using body holds but was unsuccessful. During the struggle I gave additional orders to stop resisting and he refused all orders. Responding staff arrived and control was finally gained. I was ordered to report to the facility infirmary for medical assessment and treatment.

[REDACTED]

Area supervisor notified.

Respectfully submitted,

T. Bellinger, C.O.

T. Bellinger

NEW YORK STATE - DEPARTMENT OF CORRECTIONAL SERVICES
SING SING CORRECTIONAL FACILITY
MEMORANDUM

TO: [REDACTED] Barnes, Sergeant

FROM: [REDACTED] Woody, C.O.

SUBJECT: U.I. #10-0200

DATE: November 16, 2010

Sir,

On the above date at approximately 7:20 p.m. I observed Inmate K. Samuels 97A0331 strike Officer Bellinger in his facial area. I immediately responded and attempted to stop the assault. Inmate Samuels took up a fighting stance and struck me on my left side of the face twice with a closed clenched left fist. I attempted to use a bear hug type body hold to gain control over this inmate but was unsuccessful. I gave several orders to stop resisting but he refused all orders. Fearing for my safety and to prevent further assault on all parties involved I drew my defensive weapon (baton) and attempted to strike this inmate on his shoulder/back area. During this violent struggle I inadvertently struck this inmate on his head area approximately three times. My actions caused the assault to stop. I used a bear hug type body hold and forced this inmate to the ground. Once on the ground I took control over this inmates left wrist using my left hand and forced the same into the small of his back. I then took control of his right wrist using my right hand and forced the same into the small of his back forcing mechanical restraints to both wrists. I was ordered to report to the facility infirmary for assessment and necessary treatment.

[REDACTED] Area supervisor notified.

Respectfully submitted,
R. Woody C.O.
R. Woody, C.O.

Exh. B H P

EXHIBIT P

UNUSUAL INCIDENT
REPORT
(UNREDACTED)

IN CAMERA
REVIEW ONLY


Exhibit D

EXHIBIT Q

TO/FROM
MEMORANDA
(UNREDACTED)

IN CAMERA
REVIEW ONLY

VERIFICATION



STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

MARCUS J. MASTRACCO, being duly sworn, deposes and says:

I am an Assistant Solicitor General in the office of
ERIC T. SCHNEIDERMAN, Attorney General of the State of New York.

I have been assigned to defend the within proceeding and I am
acquainted therewith having examined the exhibits annexed to the foregoing
Verified Answer constituting the Return herein.

I have read the foregoing Verified Answer and know the contents
thereof, and the same is true to my knowledge based on the documents in the
Return.



MARCUS J. MASTRACCO
Assistant Solicitor General

Sworn to before me this

11 day of October, 2011



Assistant Solicitor General

Alvin Kershaw, being duly sworn, deposes and says:

I am over eighteen years of age and an employee in the office of
ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,
attorney for respondents herein.

On the 11th day of October, 2011, I served the annexed
VERIFIED ANSWER AND RETURN upon the individual named below by
depositing a true copy thereof, properly enclosed in a sealed, postpaid wrapper, in a
letter box of the Capitol Station Post Office in the City of Albany, New York, a
depository under the exclusive care and custody of the United States Post Office
Department, directed to the said individual at the address within the State and
respectively designated by him for that purpose as follows:

KENNETH SAMUELS
97-A-0331
Upstate Correctional Facility
P.O. Box 2001
Malone, NY 12953

Sworn to before me this

11th day of October, 2011.


Alvin Kershaw

William H. Collins

NOTARY PUBLIC

WILLIAM H. COLLINS
Notary Public, State of New York
Reg. No. 4694477
Qualified in Schenectady County
Commission Expires June 30, 2015

At a Special Term of the Supreme
Court of the State of New York,
held in and for the County of Albany,
at the Courthouse, in the City of Albany,
New York, on the 21th day of October,
2011.



PRESENT: HON. GEORGE D. GERESIA, JR.
Justice Presiding.

Albany County Clerk
Document Number 11030146
Rcvd 11/17/2011 4:19:51 PM



In the Matter of the Application of

KENNETH SAMUELS, #97-A-0331,

Petitioner,

ORDER OF TRANSFER

- against -

Index No. 4127-11

BRIAN FISCHER, Commissioner of DOC;
ERIC T. SCHNEIDERMAN, Attorney General,

Respondents.

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

OAG No. 11-130726

Upon reading and filing the order to show cause, signed June 29, 2011,
the petition, sworn to June 9, 2011, and the answer, verified October 11, 2011,
and it appearing from the pleadings that a question of substantial evidence
has been raised requiring transfer of the proceeding to the Appellate Division,



Third Department, and respondents having raised no objection in point of law that could terminate the proceeding in this Court, it is

ORDERED, that this proceeding be and hereby is transferred, pursuant to C.P.L.R. 7804(g), to the Appellate Division, Third Department, for disposition.

TRG
Dated: Albany, New York

~~October~~, 2011

November 9, 2011

George B. Ceresa
HON. GEORGE B. CERESIA, JR.
J.S.C.

Thomas J. C.
RAY
WITTM

ENTER:

Albany County Clerk
Document Number 11030146
Rcvd 11/17/2011 4:19:51 PM





STATE OF NEW YORK
SUPREME COURT CHAMBERS
RENSSELAER COUNTY COURT HOUSE
TROY, NEW YORK 12180

GEORGE B. CERESIA, JR.
JUSTICE

WILLIAM J. ARAM
LAW CLERK

TELEPHONE
(518) 285-6152

4127-11

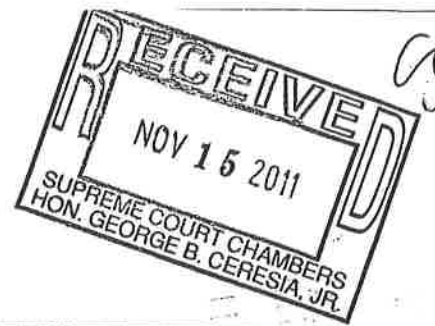
November 16, 2011

The Court is forwarding the original order (or judgment) directly to the prevailing party, who is required to comply with the provisions of CPLR 2220 with regard to the filing and entry of the order (or judgment). A photocopy of the order (or judgment) is being forwarded to all other parties who appeared in the action. **All original motion papers are being delivered by the Court either to the Supreme Court Clerk for transmission to the County Clerk, or directly to the County Clerk.**

William J. Aram
Law Clerk

A handwritten signature, likely of William J. Aram, is located in the bottom left corner of the page.

Albany County Clerk
Document Number 11031180
Rcvd 11/18/2011 4:02:06 PM



Kenneth Samuels
P.O. Box 2001
Malone, NY 12933

11/4/11

RECEIVED
11-18-11 4:02:06 PM
CLERK'S OFFICE

Albany County Supreme Court
Special Term Clerk Room 102
Albany County Courthouse
Albany, New York 12207

Re: Art 78, Index 4127-11

Attached hereto is a Reply to the respondents
Verified Answer and Return.

All parties have been served with a copy of
petitioner's Reply. See (Affidavit of Service)

Petitioner apologizes for any delay he may
have cause in these proceedings.

Assigned Judge GEORGE D. CERESIA, JR.

Special Term Date 10-21-11

Calendar # 8

RJI # 01-11-ST2854

Respectfully

Kenneth Samuels

OFFICE OF
ALBANY COUNTY
CLERK
11/18/11 4:02:06 PM
ALBANY, N.Y.

32

Supreme Court of the State of New York
County of Albany
In the Matter of the Application of
Kenneth Samuels

Albany County Clerk
Document Number 11031180
Rcvd 11/18/2011 4:02:06 PM


Petitioner

Reply

- against -

Index # 4127-11
ORI # NY 001035J

Brian Fischer Commissioner of Doc
Eric T. Schneiderman Attorney General
Respondents.

or a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

I am the above named Petitioner and depose and
sway?

1. I am proceeding Prose in this matter and would
ask that this Court not hold petitioner to the same standards
as a practising Attorney.
2. The Petitioner makes this Reply in direct response
to the respondents Verified Answer and Return.
3. The Petitioner objects to each and every contention
within the respondents Verified Answer, which denies Petitioner's
actual Claims outlined in the Petition for a Judgment Pursuant to
Article 78.

4. The Petitioner objects to each and every paragraph in which the respondents contend "As to any legal argument petitioner makes in such paragraphs, respondents are neither able nor required to respond by admission or denial, As to the relief which petitioner request in such paragraphs a responsive is not required."

5. The Petitioner objects to the respondents verified answer give the respondents lack of knowledge sufficient to form a reasonable bases to deny Petitioners factual claims.

6. The Petitioner objects to the respondents contentions in paragraphs 16, 17 in its entirety. Petitioner has neither failed to preserve nor waived any claim and respectfully directs his courts attention to both his administrative appeal and the present petition for a Judgment pursuant to Article 78.

7. The Petitioner object to the respondents contentions with regards to the dismissal of any respondent and/or the transfer of this matter to the Appellate Division. This court is more than capable rendering a just determination in this matter. The respondents contentions in paragraph 23, ~~and~~ and their reliance on CPLR 7804(g) is missed placed.

8. The Petitioner objects and this court should reject respondents unwarranted and arbitrary request for a Judgment dismissing the instant petition. The respondents have raised no objection in point of law or within their verified answer

that would require this court to dismiss the instant petition, in fact the respondents have conceded as much within their verified answer. See paragraph 23.

Wherefore, Petitioner request that a judgment pursuant to PLR Article 78 be granted:

1) Reversing the decision of the respondents declaring it null and void;

2) Order respondents and whom ever else shall have care, custody and control of petitioner's records to expunge all entries of said hearing superintendent hearing, the decision, appeal and underlying charges from all Petitioner records including institutional, departmental and parole records;

3) Restoring petitioner in all respects to the status which he enjoyed prior to commencement of the Tier 3 hearing including restoration of 365 days good time and release from SHU.

4) And for such other and further relief as the court seems just and proper.

Dated 11/4/11
Franklin County

Respectfully
Kenneth Darnold

cc: All parties

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

COUNTY OF FRANKLIN) S.S.:

Albany County Clerk
Document Number 11031180
Rcvd 11/18/2011 4:02:06 PM



11-17-11

Kenneth Samuels being duly sworn, deposes and says:

I am the Petitioner in the enclosed action.

I have on this 4th day of November, 2011. Placed and submitted within the institutional mailbox located at: Upstate Correctional Facility, P.O. Box 2001, Malone, NY 12953

The following:

Albany County Supreme Court
Brian Fischer
Eric T. Schneiderman

To be mailed and delivered via the United States Postal Service upon the following:

Albany County
Supreme Court
Special term Clerk Rm 102
Albany County Courthouse
Albany NY 12207

Brian Fischer
Commissioner, The
Harriman State
Campus Building
1220 Washington
Ave. Albany NY
12226-2050

Eric T. Schneiderman
Attorney General
Department of Law
State Capital, Albany
New York 12224


Petitioner, Pro-Se

Sworn to me this 3d day
of October, 2011.


Notary Public

Donna J. Mainville
Notary Public State of New York
New York State No. 01MA6221161
County of Franklin
My Commission Expires on: 05/24/2014



State of New York
Supreme Court, Appellate Division
Third Judicial Department
P.O. Box 7288, Capitol Station
Albany, NY 12224-0288

Albany County Clerk
Document Number 11080686
Rcvd 02/01/2012 9:41:56 AM



Robert D. Mayberger
Clerk of the Court

(518) 471-4777
fax (518) 471-4750
<http://www.nycourts.gov/ad3>
January 30, 2012

inf

DONE 2.3.12

Hon. Thomas G. Clingan
Albany County Clerk
16 Eagle Street Room 102
Albany, NY 12207

Re: # 513503-Matter of Samuels v Fischer (Index No. 4127-11)

Dear Sir:

Petitioner has appealed from a judgment of the Supreme Court, Albany County, which dismissed petitioner's article 78 proceeding.

The Court has directed that the appeal be heard on the original papers filed in your office and has requested me to ask you to forward these papers to this office.

Very truly yours,

Jeffrey L. Weyant
Assistant Deputy Clerk

JLW/mks

00

Search Date: 2/3/2012 9:38 AM

Instrument Type: Civil Index Number
Filing Date: 06/16/2011 11:19 AM
Document Number: 10905824

Albany County Clerk
Document Number 11119476
Rcvd 03/29/2012 10:23:07 AM



Related Names:

SAMUELS KENNETH Plaintiff
NYS COMMISSIONER OF CORRECTION SERV Defendant
NYS ATTORNEY GENERAL Defendant

Document Location:

Civil Flat File Area - Year:2011 Civil Index Numbe:4127
Type Of Case - Type of Case:Spec. Proc

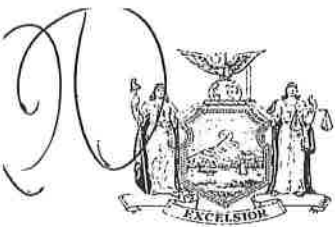
Related Documents:

- 06/16/2011 Civil Filing
 - ... \ UNSIGNED ORDER TO SHOW CAUSE
- 07/11/2011 Civil Filing
 - ... \ ORDER TO SHOW CAUSE
 - ... \ JSC PLATKIN
 - NOTICE OF MOTION
 - ... \ POOR PERSON GRANTED
 - ... \ AFFIDAVIT
 - ... \ AUTHORIZATION
 - ... \ EXHIBIT
- 08/03/2011 Civil Filing
 - ... \ RJI
- 11/15/2011 Civil Filing
 - ... \ EXHIBITS
 - ... \ AFFIDAVIT IN SUPPORT
 - ... \ PETITION
 - ... \ 2 VERIFICATION
 - ... \ 2 AFFIDAVIT OF SERVICE BY MAIL
 - ... \ LETTERS
 - ... \ VER ANSWER & RETURN
- 11/17/2011 Civil Filing
 - ... \ ORDER OF TRANSFER TO APP DIV JSC CERESIA JR
 - ... \ UNSIGNED AFFIDAVIT OF SERVICE BY MAIL
- 11/18/2011 Civil Filing
 - ... \ LETTER
 - ... \ REPLY
 - ... \ AFFIDAVIT OF SERVICE BY MAIL
- 02/01/2012 Civil Filing
 - ... \ LETTER

RECEIVED
APP. DIV.
3RD DEPT.
2012 FEB - 8 PM 4:09

LETTER REQUEST OF JEFFREY L. WEYANT

Thomas J. C.



State of New York
Supreme Court, Appellate Division
Third Judicial Department
P.O. Box 7288, Capitol Station
Albany, NY 12224-0288

RAW

Robert D. Mayberger
Clerk of the Court

(518) 471-4777
fax (518) 471-4750
<http://www.nycourts.gov/ad3>

4127-11

October 5, 2012

Hon. Thomas G. Clingan
Albany County Clerk
Albany County Courthouse
16 Eagle Street - Room 128
Albany, NY 12207

RE: **#513503 - SAMUELS v FISCHER**

Dear Mr. Clingan:

Enclosed is the original record on appeal, together with a copy of the Court's decision/order, for filing in your office pursuant to CPLR 5524(b).

Very truly yours,


Robert D. Mayberger
Clerk of the Court

RDM/pc
Encs.

Albany County Clerk
Document Number 11257904
Rcvd 10/19/2012 12:11:00 PM



22

Search Date: 2/3/2012 9:38 AM

ALL PAPERS SENT TO APPELLATE DIVISION

Instrument Type: Civil Index Number

Filing Date: 06/16/2011 11:19 AM

Document Number: 10905824

Related Names:

SAMUELS KENNETH Plaintiff

NYS COMMISSIONER OF CORRECTION SERV Defendant

NYS ATTORNEY GENERAL Defendant

SENT

Albany County Clerk
Document Number 11082840
Rcvd 02/03/2012 9:50:18 AM



Document Location:

Civil Flat File Area - Year:2011 Civil Index Numbe:4127

Type Of Case - Type of Case:Spec. Proc

Related Documents:

- 06/16/2011 Civil Filing
 - ... \ UNSIGNED ORDER TO SHOW CAUSE
- 07/11/2011 Civil Filing
 - ... \ ORDER TO SHOW CAUSE
 - ... \ JSC PLATKIN
 - ... \ NOTICE OF MOTION
 - ... \ POOR PERSON GRANTED
 - ... \ AFFIDAVIT
 - ... \ AUTHORIZATION
 - ... \ EXHIBIT
- 08/03/2011 Civil Filing
 - ... \ RJJ
- 11/15/2011 Civil Filing
 - ... \ EXHIBITS
 - ... \ AFFIDAVIT IN SUPPORT
 - ... \ PETITION
 - ... \ 2 VERIFICATION
 - ... \ 2 AFFIDAVIT OF SERVICE BY MAIL
 - ... \ LETTERS
 - ... \ VER ANSWER & RETURN
- 11/17/2011 Civil Filing
 - ... \ ORDER OF TRANSFER TO APP DIV JSC CERESIA JR
 - ... \ UNSIGNED AFFIDAVIT OF SERVICE BY MAIL
- 11/18/2011 Civil Filing
 - ... \ LETTER
 - ... \ REPLY
 - ... \ AFFIDAVIT OF SERVICE BY MAIL
- 02/01/2012 Civil Filing
 - ... \ LETTER

LETTER REQUEST OF JEFFREY L. WEYANT

James J. C.

FILE

STATE OF NEW YORK
SUPREME COURT



COUNTY OF ALBANY

In the Matter of the Application of

KENNETH SAMUELS, 97-A-0331,

01-11-ST2854

Petitioner,

-against-

ORDER TO SHOW CAUSE

Index # 4127-11

BRIAN FISCHER, COMMISSIONER OF DOC;
ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL,

Respondent(s).

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Supreme Court, Albany County,

HON. RICHARD M. PLATKIN, ACTING JUSTICE PRESIDING

APPEARANCES: KENNETH SAMUELS
Petitioner Pro Se

This ex parte matter was referred to my attention at a
Part I Term, Supreme Court, at Albany County.

Upon reading of the Petition, sworn to the 9th day of
June, 2011;

LET respondents show cause at a Special Term of the
Supreme Court, to be held in and for the County of Albany, on
September 9, 2011, at the Albany County Courthouse, at Eagle and
Columbia Streets, Albany, New York 12207, at 9:30 o'clock in the
forenoon thereof WHY the relief requested in the Petition should
not be granted, it is

ORDERED, that service of this Order to Show Cause, the
petition, exhibits and any supporting affidavits, by ordinary First
Class Mail, upon each named respondent and upon the Attorney
General for the State of New York, at the Department of Law, State
Capitol, Albany, New York 12224, on or before July 29, 2011, shall
be deemed adequate.

It is petitioner's responsibility to:

(a) Serve his/her papers as authorized above or by
personal service. The grant of poor person relief does not
authorize the assignment or appointment of counsel, nor does it
authorize the Clerk's Office to provide photo-reproduction services

4/27-11

or service of papers on behalf of a pro se litigant, as these services are not statutorily authorized under a grant of poor person relief (CPLR §1102).

(b) Submit all papers upon which he is relying, including the Order to Show Cause **and** the Petition, together with 3 copies of a Request for Judicial Intervention (RJI) Form and the original proof of service, to the **Albany County Supreme Court Special Term Clerk, Room 102, Albany County Courthouse, Albany, NY 12207** at least eight (8) days prior to the return date.

Answers/or opposition papers are to be served at least five (5) days before the return date.

IT IS SO ORDERED!

Dated: June 29, 2011
at Albany, New York



ACTING J.S.C.

Albany County Clerk
Document Number 11025971
Rcvd 11/15/2011 12:32:42 PM



STATE OF NEW YORK
COUNTY OF ALBANY SUPREME COURT

FILE

-----X
In the Matter of the Application of

ORDER

KENNETH SAMUELS

INDEX # 4127-11

DIN # 97-A-0331

*for Poor Person Status pursuant to
CPLR §1101(f).*

ORI # NY001035J

-----X
Nature of Action or Proceeding: Article 78

The above-named inmate under sentence for conviction of a crime and having made application pursuant to CPLR §1101(f) for Poor Person status,

It is hereby ORDERED that this application is:

- ☐ DENIED, and all applicable filing fees must be paid by the inmate within 120 days of the date of this order, or else the action/proceeding shall be deemed dismissed without further order of the court.
- ☒ GRANTED, and the inmate is directed to pay a reduced filing fee of \$ 15.00 and he/she shall be liable for no other fees in the action/proceeding before this court unless a recovery by judgment or by settlement is had in his/her favor in which event the court may direct him/her to pay out of the recovery all or part of such fees as are hereby forgiven.

It is further ORDERED:

- ☒ That the inmate IS NOT REQUIRED to make any initial payment to the court of a portion of the reduced filing fee. The full amount of the reduced filing fee shall be reported to the superintendent or other public official in charge of the facility where the inmate is confined, who shall collect such amount from the inmate in the same manner as mandatory surcharges are collected pursuant to section 60.35(5) of the Penal Law.
- ☐ That the inmate IS REQUIRED to make an initial payment of \$ _____, of the reduced filing fee. Once such initial payment is fully received by the court, the amount of the difference between such initial payment and the reduced filing fee, or \$ _____, shall be assessed as an outstanding obligation of the inmate and reported to the superintendent or other public official in charge of the facility where the inmate is confined, who shall collect such amount from the inmate in the same manner as mandatory surcharges are collected pursuant to section 60.35(5) of the Penal Law.

Dated: June 29, 2011
at Albany, New York


Acting Justice of the Supreme Court

Copies: COURT / COUNTY CLERK

FACILITY

INMATE

Upst

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: August 2, 2012

513503

In the Matter of KENNETH
SAMUELS,
v
Petitioner,

BRIAN FISCHER, as Commissioner
of Corrections and Community
Supervision, et al.,
Respondents.

MEMORANDUM AND JUDGMENT

Albany County Clerk
Document Number 11257904
Rcvd 10/19/2012 12:11:00 PM


Calendar Date: June 6, 2012

Before: Mercure, J.P., Spain, Malone Jr., McCarthy and
Garry, JJ.

Kenneth Samuels, Malone, petitioner pro se.

Eric T. Schneiderman, Attorney General, Albany (Peter H.
Schiff of counsel), for respondents.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Commissioner of Corrections and Community Supervision which found petitioner guilty of violating certain prison disciplinary rules.

Following a tier III disciplinary hearing, petitioner was found guilty of engaging in violent conduct, creating a disturbance, two counts of assaulting staff, two counts of refusing a direct order, interfering with an employee, being out of place and violating facility movement regulations. The determination was upheld upon petitioner's administrative appeal and this CPLR article 78 proceeding challenging that

determination ensued.¹

We agree with petitioner that his conditional right to call witnesses was violated at the hearing (see Matter of Barnes v LeFevre, 69 NY2d 649, 650 [1986]; Matter of Hill v Selsky, 19 AD3d 64, 66 [2005]). First, although the employee assistant form shows that petitioner requested that at least five inmates testify at the hearing, the Hearing Officer neither conducted an inquiry nor advised petitioner of the reasons that two of those inmates refused to testify, as was required. The record reflects that when petitioner inquired about those two witnesses at the hearing, the Hearing Officer simply informed petitioner that they refused to testify. However, the Hearing Officer made "no inquiry at all into the reason[s]" those inmates refused to testify (Matter of Hill v Selsky, 19 AD3d at 66), petitioner was not given inmate refusal forms, and his employee assistant was not called to testify regarding the inmates' refusals to testify.

In addition to the inmates that petitioner identified to his assistant, at the hearing he requested the testimony of inmates who were in specific cell locations near the location of the incident; although he did not know their names, he gave the Hearing Officer specific cell numbers. There is no indication on this record that any effort was made by the Hearing Officer to either identify those inmates or inquire as to their willingness to testify, nor does the record reflect that the Hearing Officer provided petitioner with any reason for denying the testimony of those inmates.

Under these circumstances, the Hearing Officer's actions deprived petitioner of his right to call witnesses and require expungement, rather than remittal (see Matter of Moye v Fischer, 93 AD3d 1006, 1007 [2012]; Matter of Jamison v Fischer, 78 AD3d 1466 [2010]). In addition, petitioner is entitled to the

¹ Inasmuch as the petition did not raise a question of substantial evidence, the proceeding was improperly transferred to this Court. Nonetheless, in the interest of judicial economy, we retain jurisdiction and address the merits of petitioner's claims (see Matter of Barone v Prack, 92 AD3d 999, 999 n [2012]).

restoration of any good time lost as a result of the disciplinary determination (see Matter of Barnes v LeFevre, 69 NY2d at 650). In light of the foregoing, we need not address petitioner's remaining contentions.

Mercure, J.P., Spain, Malone Jr., McCarthy and Garry, JJ.,
concur.

ADJUDGED that the determination is annulled, without costs, petition granted and respondent is directed to expunge all references to this matter from petitioner's institutional record and to restore any good time taken as a result thereof.

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Robert D. Mayberger
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